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# CRIMINAL JUSTICE IN A CANADIAN PROVINCE: A STUDY OF THE SENTENCING PROCESS

by

(C) John Hagan

A THESIS

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled Criminal Justice in a Canadian Province: A Study of the Sentencing Process submitted by John Hagan in partial fulfilment of the requirements for the degree of Doctor of Philosophy.

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Date 22 April 1974

## ABSTRACT

Criminal justice was once assumed; it is now a topic of debate. Concern originates with the social consequences of sentencing: the populations of our prisons. Incarcerated offenders are disproportionately of economically disadvantaged, minority group backgrounds. The following question emerges: "How can we best explain these disproportions?" Answers are provided in several forms.

Data from twenty American studies are reviewed. The analysis indicates that while there may be some evidence of differential sentencing, knowledge of extra-legal offender characteristics contributes relatively little to our ability to predict judicial dispositions. Methodological difficulties of such studies are discussed, and the techniques of step-wise multiple regresssion and path analysis are proposed as solutions to many of the problems involved.

Attention is next focused on the sentencing of Native Indian and lower socio-economic status offenders in the Province of Alberta, a jurisdiction alleged to be among the most punitive in the Western World. An analysis follows, based on samples gathered at three stages of the sentencing process: (1) 1018 persons charged and handled by the

Prosecutor's Office in Edmonton; (2) 776 questionaires based on presentence reports prepared in all offices of the Adult Probation Department; and (3) 1000 offenders sentenced and admitted to the five largest prisons in the Province.

The analysis challenges popular conceptions about criminal justice. For example, it is frequently argued that Native and lower socio-economic status defendants receive differential treatment from the courts. However, our analysis reveals that when legal variables are held constant, differences in sentences are minimal. Legal variables-- prior convictions and the numbers and types of charges-- are found to be salient at all three stages of the sentencing process.

Other variables are also shown to influence sentencing. At the prosecution stage, presence of defense counsel, initial plea, and charge alteration are important. Similarly, at the presentencing stage, the probation officer's perception of demeanor, assessment of success prospects, and recommendation for sentence are influential. However, the extent to which these variables are race or class-connected is not large.

In the final analysis, the use of fines best explained disproportions in incarceration. Native offenders were

nearly twice as frequently incarcerated as whites for non-payment of fines. Almost two thirds of all Native Persons incarcerated over a two month period forfeited fine payments. This pattern is linked to problems of alcohol abuse. Three recommendations are offered: (1) an expansion of the availability of detoxification centres; (2) an increased use of Native Court Workers; and (3) the development of a progressive, income-related fine system.

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# CHAPTER I:

# THE PROBLEM: SOCIAL CONSEQUENCES OF CRIME AND PUNISHMENT

## THE PROBLEM: SOCIAL CONSEQUENCES OF CRIME AND PUNISHMENT

The law, observed George Herbert Mead (1928), is a two-sided sword. Acting as a deterrent to some, it may increase the likelihood of recidivism among others; satisfying the victim's desire for retribution, it may increase a sense of injustice among those who are punished; protecting the safety of society, it must restrict the freedom of those who pose a threat; and, finally, attempting to rehabilitate those who offend, its therapies will often be imposed on a clientele hostile to receiving them. Given this set of conflicts, it is not difficult to understand why the job of effecting "justice" is problematic, and the guidance provided in legislation directed toward the achievement of this task, so flexible. It is within this context, however, that systems of criminal justice must operate. Justice is to find its direction in the wise exercise of discretion by its appointed agents. The result is a concern for the use of this discretion and the disparities that may follow from it.

## JUDICIAL DISCRETION IN CANADA[1]

Perhaps the most familiar example of the role of discretion in the process of criminal justice involves the sentencing responsibilities of the judiciary. Anglo-American systems of criminal justice depend generously on the careful

exercise of discretion by the judiciary, and this is particularly the case in Canada. Legislation outlining the sentencing responsibilities of the criminal courts in Canada entrusts to presiding judges nearly complete freedom in the determination of minimum sentences. Similarly, a wide range of discretion is allowed in the establishment of maximum penalties. Thus Hogarth appropriately notes that "The formal law as expressed in the Criminal Code and related statutes gives enormous discretionary power to the courts without guidance as to how that power is to be exercised" (1971:4).

The nature of the problem, however, extends beyond the absence of statuatory guides to minimum and maximum sentences. Also involved is confusion regarding a basic set of principles to be used in the determination of sentences. Thus Decore (1964) notes that even the utilization of precedents in sentencing is a matter of contradiction and doubt. A consequence is a heavy burden on the sentencing judge, with the implication that variation and disparity will follow.

A striking indication that Canadian sentencing patterns may be distinctive is found in the research of Cousineau and Veevers (1972). This study compares the use of imprisonment in Canada with that in other western countries. Findings reported by Cousineau and Veevers indicate that Canada ranks

highest among western nations in its rate of incarceration.

Several studies hae attempted to chart the effects of the use of judicial discretion within Canada. The first of these studies, by Jaffary (1963), examined differences in sentencing patterns between provinces. Finding that the differences were substantial, Jaffary concluded that important discrepancies exist in the severity of the treatment of offenders in Canada.

Using a similar mode of analysis, Matthews (1972) compared sentencing norms in the Province of Alberta with those of other provinces in Canada. Data reported in this study suggest that Alberta has the highest "incarceration to conviction ratio" of any province in the nation. Extrapolating from the findings of Cousineau and Veevers, Matthews concludes that "... Alberta's use of incarceration for minor offenses is greater than any other country in the Western World" (1972:63). More recently, however, Swanton (1973) has demonstrated that although Alberta remains high relative to other provinces in its rate of incarceration, the differences between provinces are smaller than originally indicated.

A final study of sentencing, by John Hogarth (1971), has shifted concern from differences between provinces, to variation between judges. The goal of this research is to

explain variation in sentencing through attention to judicial (1) attitudes and beliefs, (2) perceptions of social and legal constraints, (3) cognitive styles, and (4) perceptions of relevant case facts. The result of Hogarth's analysis is a powerful model for the prediction of variation in sentencing.

Several comments may help to place the studies we have reviewed in proper context. First, the studies discussed deal primarily[2] with aggregated units of analysis: their major concerns are with variation in sentencing between nations, provinces, and judges. Taken at their own levels of analysis, the resultant findings are both valid and important. However, when the level of analysis is not explicitly clear in the interpretation of such data, problems of inference can emerge (Robinson, 1950; Blalock, 1961; Hannan, 1972). What is required is information regarding variation within these larger categories, focusing on the individual offender as the unit of analysis. For example, in the current study, we will be concerned with variation in the sentences received by Native and lower socio-economic status offenders.[3] As this type of research is combined with that carried out at higher levels of analysis, we will eventually be able to determine the relative contribution of variables operative between and within the different levels, to the explanation of the total

variation in sentencing.

Second, each of the studies we have reviewed focuses on only one stage in the sentencing process. It is important to note that sentencing <u>is</u> a process, and that therefore we must consider the various stages involved. For example, the prosecutor can play an important role in determining the charges that will receive sentence. The probation officer may be influential in providing a recommendation for sentence in the presentence report. Offenders themselves often play a crucial role in their willingness or ability to take advantage of fine options. Finally, correctional authorities make important decisions after sentencing in determining the type of institutional treatment that the incarcerated offender will receive. Previous research has often neglected these antecedents and consequences of the actual imposition of sentence. The current study examines sentencing as a sequential process, with attention given to several of the stages involved[4].

A third observation involves the inferences that can be drawn from the findings reported in the studies previously discussed. It needs to be emphasized that complete uniformity in sentencing is not the goal of modern systems of criminal justice. Realization of such a goal would necessitate reintroduction of a set of penal statutes

inflexible to the particular circumstances of those appearing before the courts (Hogarth, 1971:7). What is desired is something much more difficult to achieve: what Hood (1962) has referred to as "equality of consideration." It is to the prospects for equal consideration, in the context of wide-ranging powers of judicial discretion, that our attention now turns.

## DISCRETION, DISPARITY, AND DIFFERENTIAL SENTENCING

A recently popular point of view in the field of criminology has argued that the use of discretion in sentencing is a matter of bureaucratic convenience, with disadvantaged minority groups suffering the unfortunate consequences. Thus it is frequently assumed, without adequate test, that discontinuities resulting from the exercise of judicial discretion will find expression in differential sentencing practices.

To date, this viewpoint has probably found its strongest advocates in the United States. For example, Quinney proposes that,

> Obviously judicial decisions are not made uniformly. Decisions are made according to a host of extra-legal factors, including the age of the offender, his race, and social class.
>
> Perhaps the most obvious example of judicial discretion occurs in the handling of cases of persons from minority groups. Negroes, in

> comparison to whites, are convicted with lesser evidence and sentenced to more severe punishments (1970:142).

A more detailed version of this argument is presented in the work of Chambliss and Seidman (1971). An attempt is made here to develop a propositional theory of the legal process applicable in complex societies like Canada and the United States. The theory views systems of criminal justice as bureaucracies whose use of discretion is problematic. The key postulate in the system of propositions assumes that legal decision-making will be motivated by the desire to maximize institutional benefits, while minimizing organizational strains. In addition, it is assumed that political power, in its close association with social status, is the basic determinant of organizational rewards and constraints. Two testable deductions follow:

> (1) Where laws are so stated that people of all classes are equally likely to violate them, the lower the social position of the offender, the greater is the likelihood that sanctions will be imposed on him.
>
> (2) When sanctions are imposed, the most severe sanctions will be imposed on persons in the lowest social class (1971:475).

Leaving no doubt about the meaning of these propositions for the actions of the judiciary, Chambliss and Seidman observe that, "The judge's role in Anglo-American law in sentencing allows for at least as great discretion as

do the roles of the prosecutor and the police.... The demands for efficient and orderly performance of the court take priority and create a propensity on the part of the courts to dispose of cases in ways that ensure the continued smooth functioning of the system. The consequence of such a policy is to systematically select certain categories of offenders (specifically the poor and the black) for the most severe treatment" (1971:468). Similar concerns seem imminent in Canada.

## CRIME AND PUNISHMENT IN A CANADIAN PROVINCE

While questions of criminal justice have not received the attention in Canada that they have in the United States, signs of an emerging concern are apparent. Recent reports by the Canadian Corrections Association (1967) and the Canadian Civil Liberties Educational Trust (1971) have indicated a growing concern for the possibilities of injustice in the operations of our legal system. From the academic quarter, a similar concern is expressed in Turrittin's response to John Hogarth's landmark research effort: "By providing the 'inside story' on sentencing, the... appetite is whetted for similarly exhaustive research regarding other aspects of Canada's criminal justice system, such as the social consequences of sentencing...." (1972:192).

The awakening of interest in criminal justice in Canada

has seemed to have as one of its origins a growing awareness of perhaps the most disturbing result of the operations of our legal system: the populations of our prisons. Although precise figures have seldom been available, Canadians have increasingly become aware that our prisons contain a disproportionate segment of offenders with disadvantaged, minority group backgrounds. The concern, of course, is with the factors that send these particular offenders to the prison setting.

To answer such questions about crime and its punishment in Canada, it is necessary to approach the problem on a level of analysis that allows attention to a relatively detailed set of data. Thus, in the current study, the sentencing process is investigated in a restricted setting: the Province of Alberta. Attention to the problem within this setting allows us to focus on a series of important steps in the sentencing process. Thus, our analysis will include attention to (1) the activities involved in criminal prosecution, (2) the role of the probation officer in the presentencing process, and (3) the consequences of sentencing in terms of incarceration and treatment.

The choice of Alberta as the setting for the study is appropriate in that the Province contains a relatively large Indian and Metis population, a minority whose fate in the

hands of the law has become a topic of renewed concern in recent years (Stewart, 1964; Westermeyer, 1973; Reasons, 1972; Bienvenue and Latif, 1973). Adding to the interest of a study in this setting, is the controversy surrounding Matthews' (1972) charge that the dispensation of prison sentences in Alberta is proportionally greater than in any other part of the Western World.

Three samples form the basis of our investigation:

(1) A sample of 1,000 offenders sentenced and admitted to the five largest prisons in the Province over a two month period, from February 15 to April 15, 1973.

(2) A sample of 776 questionaires, based on the information contained in presentence reports, completed by probation officers in all offices of the Adult Probation Department in the Province, during a four month period from February 1 to June 1, 1973.

(3) A sample of 1,018 persons charged and handled by the Prosecutor's Office in Edmonton during a six month period, from October 1, 1972 to April 1, 1973.

Each of these samples will be discussed in more detail as the data concerned are analyzed in the chapters that follow. For the moment, however, our attention will be confined to the use of the first sample, in census-like fashion, to indicate the social consequences of incarceration in Alberta.

Turning our attention to Table I, we can see the racial[8] consequences of incarceration in the five largest

TABLE I:

PROPORTION NATIVE AND WHITE OFFENDERS INCARCERATED

IN ALBERTA CORRECTIONAL INSTITUTIONS

Prison

| Race | Fort Saskatchewan | Calgary | Lethbridge | Peace River | Belmont | Total |
|---|---|---|---|---|---|---|
| Indian & Metis | 38.9% (146) | 25.9% (83) | 76.9% (114) | 54.5% (30) | 26.7% (20) | 39.5% (393) |
| White | 61.1% (229) | 74.1% (238) | 32.1% (54) | 45.5% (25) | 73.3% (55) | 60.5% (601) |
| | 375 | 321 | 168 | 55 | 75 | 994 |

penal institutions operated by the Province. This Table indicates that the Native population of the various institutions ranges from a high 67.9 per cent at Lethbridge to a low of 25.9 per cent in Calgary. Overall, Table I indicates that 39.5 per cent of those offenders imprisoned in Alberta are of Native origin. In contrast, data from the 1971 census of Canada indicates that the Native Indian population of Alberta is only 2.7 per cent. It is possible that these figures are not strictly comparable, is the sense that some of the Metis population in the Province may have been designated in the "Other" or "Unknown" census categories. However, when the Native Indian, Other, and Unknown categories are combined, the total is still only 9.3 per cent. This figure indicates that offenders with Native backgrounds are represented at least four time as often in the Provincial prison population as in the general population.

Table II summarizes the distribution of incarerated offenders by sex. All female offenders are incarcerated in one institution in the Province, and reference to specific prisons is therefore absent from this Table. Table II reveals the most salient characteristic of the prison population of the Province: 94.7 per cent of the offenders incarcerated are men. At the same time, 1971 Canadian census data indicates that in the Province of Alberta the sex ratio

TABLE II:

PROPORTION MALE AND FEMALE OFFENDERS INCARCERATED IN ALBERTA CORRECTIONAL INSTITUTIONS

| Male | Female | Total |
|---|---|---|
| 94.7% | 5.3% | 100% |
| (943) | (53) | (996) |

TABLE III:

PROPORTION NATIVE AND WHITE, MALE AND FEMALE OFFENDERS INCARCERATED IN ALBERTA CORRECTIONAL INSTITUTIONS

| Race | Male | Female | Total |
|---|---|---|---|
| Indian & Metis | 38.8% (366) | 49.1% (26) | 39.4% (392) |
| White | 61.2% (577) | 50.9% (27) | 60.6% (604) |
| | 943 | 53 | 996 |

has equalized, with 100 males for every 100 females. Thus, in Alberta, as in most Westen Nations, women are relatively infrequently sent to prison. Table III, however, takes this finding one step further by demonstrating the relationship between race and sex among incarcerated offenders. This Table indicates that nearly 50 per cent of the females incarcerated in the Province are of Indian or Metis background. Thus, while the incarceration rate for females is generally quite low, among those women who are sentenced to prison, the representation of Native Persons is further increased over that noted in Table I.

Tables IV and V again suggest over-representation of certain types of offenders in Alberta prisons. In Table IV, providing information on the age of incarcerated offenders, 54.7 per cent of the offenders are in the youngest age group, from 16 to 25 years of age. Canadian census data from 1971 indicate that this age group contains approximately 17 per cent of the general population. Similarly, Table V reveals that 41.3 per cent of the prison sample has had educational experience beyond grade eight, while census data indicates that 67.4 per cent of the general population has completed grade nine or above.

In summation, it appears that the prison population of Alberta is disproportionately Indian, Metis and male, while

TABLE IV,

PROPORTION PERSONS 16-25, 26-70 INCARCERATED IN ALBERTA CORRECTIONAL INSTITUTIONS

Prison

| Age | Fort Saskatchewan | Calgary | Lethbridge | Peace River | Belmont | Total |
|---|---|---|---|---|---|---|
| 16-25 | 56.6% (202) | 56.7% (182) | 43.5% (70) | 70.9% (39) | 49.4% (38) | 54.7% (531) |
| 26-70 | 43.4% (155) | 43.3% (139) | 56.5% (91) | 29.1% (16) | 50.6% (39) | 45.3% (440) |
| | 357 | 321 | 161 | 55 | 77 | 971 |

TABLE V:

PROPORTION OF OFFENDERS INCARCERATED IN ALBERTA CORRECTIONAL INSTITUTIONS WITH BELOW AND ABOVE GRADE NINE EDUCATION

Prison

| Education (Grade) | Fort Saskatchewan | Calgary | Lethbridge | Peace River | Belmont | Total |
|---|---|---|---|---|---|---|
| 0-8 | 59.1% (223) | 50.0% (155) | 70.7% (116) | 78.2% (43) | 53.5% (38) | 58.7% (575) |
| 9 and above | 40.9% (155) | 50.0% (155) | 29.3% (48) | 21.8% (12) | 46.6% (33) | 41.3% (403) |
| | 378 | 310 | 164 | 55 | 71 | 978 |

also young and limited in educational background. The question that emerges is, "How can we best explain these disproportions?"

Answers to this question will range from the charges heard earlier, that the judicial system handles cases in a differential manner, to the defense that these segments of the population contain the most frequent and serious offenders. Our investigation will test these and related hypotheses.

## FOOTNOTES

[1]Several factors tht distinquish Canadian and American criminal law are discussed in Appendix IV.

[2]Hogarth's (1971) research utilizes both the offender and the judge as the unit of analysis. However, the dominant theoretical focus of the study is on variation that occurs between judges in sentencing.

[3] American research focusing on individual offender attributes is reviewed in Chapter Two.

[4]This dissertation is, of course, a beginning rather that a completion of the task. Attention is given in this analysis to prosecution, sentencing, incarceration, and treatment. Yet to be considered are information on the use of pre-trial detention (see Friedland, 1965) and the role of the victim (see the discussion of inter- and intra- racial offenses in Chapter Two). Data relating to these issues will be analyzed in future reports.

[5]Recognizing that the term "race" is used with a variety of meanings, it is important that we clarify the usage adopted in this thesis. We will restrict our usage to the referents indicated in the first definition of the Oxford Dictionary: "Group of persons... connected by common descent,...; distinct ethnical stock...."

# CHAPTER II:

# THE LITERATURE: EXTRA-LEGAL ATTRIBUTES AND CRIMINAL SENTENCING

## THE LITERATURE: EXTRA-LEGAL ATTRIBUTES AND CRIMINAL SENTENCING

Nearly half a century since Thorsten Sellin (1928) first introduced the topic for research, the issue of differential sentencing is still very much with us. The result is a large body of American research that deserves our careful consideration. The discussion that follows is a review of this research, with specific attention to the following questions:

(i) Are extra-legal attributes a basis of differential sentencing?

(ii) If so, how much differential sentencing occurs?

(iii) In what particular contexts, if any, does the differential sentencing occur?

### STUDIES OF JUDICIAL SENTENCING

Studies of judicial sentencing have tended to adopt a "sociological viewpoint", emphasizing the role of "extra-legal attributes" of the offender in the determination of judical dispositions.[1] The independent variables given prominence by this approach include the race, sex, age, and socio-economic status of the defendant. Although such variables are presumably legally irrelevant to the imposition of sentence, sociologically-oriented studies have attempted to detect the possibility of their extra-legal

influence.

An alternative view of judicial sentencing, which attends to factors emphasized in official-normative descriptions of the criminal justice system, may be referred to as the legalistic approach. The variables of interest here include the defendant's prior conviction record, and the content of the charges currently placed against him.

Table VI provides an overview of the manner in which the two viewpoints have been incorporated in twenty studies of judicial sentencing patterns.[2] All twenty of the studies treat one or more of the extra-legal offender characteristics as the independent variable(s), while sixteen of the studies also hold constant at least one legal aspect of the defendant and his offense. There is, then, in most of these studies, an acknowledgement of legal factors when testing sociological hypotheses. However, the degree to which such studies incorporate controls for legal considerations is an important source of variation. The nature of this variation, and its apparent consequences, will be a source of continuing concern in the remaining portions of this Chapter.

To understand the patterns of analysis commonly found in studies of judicial sentencing, it will be helpful to consider briefly the statistical techniques frequently used

TABLE VI

STUDIES RELATING EXTRA-LEGAL OFFENDER

CHARACTERISTICS AND JUDICIAL DECISION-MAKING

| STUDY | PRIMARY SAMPLE | SALIENT INDEPENDENT VARIABLES | SALIENT DEPENDENT VARIABLES | LEGAL VARIABLES CONTROLLED | TEST OF SIGNIFI-CANCE | MEASURE OF ASSOCIATION |
|---|---|---|---|---|---|---|
| SELLIN (1928) | 18239 cases in Detroit | race | sentence, conviction | offense | no | no |
| MARTIN (1934) | 927 cases, Texas, 1930 | race, occupation, sex, age | sentence | none | no | no |
| JOHNSON (1941) | 122 death sentences, N. Carolina, 1933-39 | race of offender & victim | appellate review | murder cases only | no | no |
| LEMERT ET.AL. (1948) | 914 cases, Los Angeles, 1930 | race | sentence | offense, prior record | yes | no |
| GARFINKEL (1949) | 821 offenders, homicide, N. Carolina | race of offender & victim | sentence, charge reduction | type of murder | no | no |
| JOHNSON (1957) | 660 admissions, death row, N. Carolina:1930-40 | race, education, occupation | execution | offense type | yes | no |
| GREEN (1961) | 1437 cases, Philadelphia | sex, age, ethnicity | sentence | offense, prior record, number of charges | yes | yes |
| BULLOCH (1961) | 3644 Texas prision inmates | race | sentence | offense type | yes | yes |
| JACOB (1962) | 1864 court cases, New Orleans | race | sentence | offense type | yes | no |
| BEDAU (1964) | 235 capital cases, New Jersey, 1907-60 | race, age sex, SES | execution | none | yes | no |

TABLE VI, CONTINUED

| STUDY | PRIMARY SAMPLE | SALIENT INDEPENDENT VARIABLES | SALIENT DEPENDENT VARIABLES | LEGAL VARIABLES CONTROLLED | TEST OF SIGNIFI-CANCE | MEASURE OF ASSOCIATION |
|---|---|---|---|---|---|---|
| GRIEB (1964) | 118 robbery cases, 291 burglary cases, Philadelphia | race of offender & victim | sentence | type of offense, number of charges, prior record | no | no |
| HARRINGTON (1965) | 2798 rape cases, Virginia | race | sentence & appellate review | type of rape | no | no |
| WOLFGANG ET. AL. (1962) | 439 death sentences, murder, Pennsylvania | age, race, occupation | appellate review | offense type | yes | no |
| WOLF (1965) | 159 capital cases, New Jersey:1937-61 | age, race | sentence | offense type | yes | no |
| BEDAU (1965) | 92 capital cases, Oregon, 1903-64 | race, age, SES | execution | none | no | no |
| FORSLUND (1969) | 3882 arrests, Sanford, Conn. | race, occupation, age | conviction, dismissal | none | yes | no |
| SOUTHERN REGIONAL COUNCIL (1969) | 1207 cases, 7 southern states | race of offender & victim | sentence | offense, prior record | no | no |
| NAGEL (1969) | 2936 larceny & assault cases | income, sex, race, age | sentence & conviction | offense, number of charges, prior record | no | yes |
| JULSON ET. AL. (1969) | 238 First Degree Murder cases, sentenced by Jury | Race, Age, Sex, SES | execution | prior record, characteristics of the offense | yes | yes |
| WOLFGANG ET. AL. (1973) | 3,000 rape cases, from 11 southern states 1945-65 | race of offender & victim | execution | prior record, contemporaneous offense, and others | yes | no |

in this type of research. Of the twenty studies cited in Table VI, eleven incorporated tests of significance, four computed summary measures of association, and eight used neither form of analysis. The frequent reliance on tests of significance in these studies is problematic, particularly given the extensive debate regarding the merits of such tests ( see Selvin, 1957; Selvin and Stuart, 1966; Kish, 1959; Camilleri, 1962; and Labovitz, 1969). In the context of the current discussion, several difficulties associated with the use of significance tests need to be examined.

A basic problem in the use of significance tests involves the frequency with which their results are misinterpreted. One source of this problem is the tendency to confuse the meanings of <u>substantive</u> and <u>statistical</u> significance. A relationship is considered statistically significant when we have established, subject to an accepted risk of error, that <u>there is</u> a relationship between two variables. Separate from the issue of whether a relationship exists is the question of <u>how strong</u> the relationship is. The strength of a relationship is indicated by a measure of association. Tests of significance are inappropriate for this purpose because they are markedly influenced by the size of the sample involved. For example, when the sample size is large, as is usually the case in studies of sentencing[3], it is generally quite easy to establish

statistical significance for even a very small relationship.[4] Within the context of large samples, then, we are saying very little by indicating that we have established a statistically significant relationship (Blalock, 1960:225).

A second problem in the use of tests of significance involves a confusion of the meanings of causal and statistical significance. This confusion of meanings is particularly dangerous in the type of nonexperimental research here considered. The error consists of a failure to acknowledge that a statistically significant relationship between an independent and dependent variable may often be alternatively explained (i.e., shown to be spurious) by controlling for antecedent variables associated with the independent and dependent variables. The tendency to mix the meanings of causal and statistical significance may thus misguidedly encourage a premature end to the process of data analysis resulting in the assignment of false importance to spurious findings.[5] This frequent failure to consider alternative explanatory hypotheses is recognized, in the current review, in the inconsistent manner in which sociologically oriented studies of judicial sentencing have held constant the influence of legally relevant variables.

One final point should be made regarding the samples

utilized in studies cited in Table VI. Ten of these studies (Johnson, 1941; Garfinkel, 1949; Johnson, 1957; Bedau, 1964; Partington, 1965; Wolfgang et al., 1962; Wolf, 1965; Bedau, 1965; Judson et al., 1969; and Wolfgang and Riedel, 1973) deal primarily with capital cases, while the remaining ten investigations (Sellin, 1928; Martin, 1934; Lemert and Rosberg, 1948; Green, 1961; Bullock, 1961; Jacob, 1962; Green, 1964; Forslund, 1969; Southern Regional Council, 1969; Nagel, 1969) focus largely on non-capital offenses. Because capital crimes directly involve important social mores, because they are more often tried before juries, and because sentencing decisions in these cases usually follow protracted litigation, it may be reasonable to expect different patterns of dispositions in samples made up of such cases. Consideration of these factors may be important in drawing inferences from the studies involved.

Succeeding sections of this Chapter will examine the twenty American studies in terms of the points emphasized above. Thus, we will in turn investigate the relationship between race, socio-economic status, age, and sex of the offender, and the nature of judicial dispositions. In each study, we will consider not only the statistical significance of the relationship, but also the strength and form of the association, the extent to which controls are introduced for the influence of legally relevant factors,

and the type of sample forming the context of the investigation.

## RACE AS THE INDEPENDENT VARIABLE

The most frequently considered offender characteristic in studies of judicial sentencing is race. Sociologically-oriented studies have been concerned that the judicial process may be either excessively harsh, or, alternatively, unduly lenient, in the handling of minority group defendants. The assumption has been that relationships observed in either direction would reflect negatively on notions of equality before the law.

To evaluate the hypothesis that "race makes a difference," we have reanalyzed relevant data from seventeen studies (see Tables VII,VIII,IX, and X).[6] Because most of the studies did <u>not</u> compute a measure of association, and because some of them also did <u>not</u> include a test of significance, it was necessary to perform additional computations on the data provided in the original tables. Where addtional computations have been performed, the results are presented in brackets. In addition, there were instances where tables useful for comparative purposes were <u>not</u> included in the final presentation of a study's findings. It was often possible, however, to reconstruct many of these tables from the text.[7] Again, summary

statistics derived from these reconstructed tables are shown in brackets. Finally, the test of significance used is chi-square ($x^2$), and the measure of association presented is Goodman and Kruskal's tau-b.[8] An advantage of the latter measure is its interpretation in terms of the increase in accuracy, beyond that available by chance, that knowledge of an independent variable makes possible in the prediction of a dependent variable. In this discussion, we will be concerned with the extent to which knowledge of the extra-legal attributes of the defendants improves our accuracy in predicting judicial dispositions.

An examination of Table VII, containing studies focusing on non-capital cases, reveals a number of interesting findings. Perhaps the most striking aspect of the table is the small magnitude of many of the relationships observed. Thus, the largest tau-b indicated in the first column of the Table is .025 (Southern Regional Council, 1969), with the majority of the studies revealing relationships much lower in strength. It is particularly notable that this is often the case regardless of the statistical significance of the findings. Thus there are several statistically significant relationships noted in the table where tau-b is smaller than .01, indicating that knowledge of race increases the accuracy of the prediction of sentencing outcome by less than one per cent.

TABLE VII

RACE AS AN INDEPENDENT VARIABLE (NON-CAPITAL CASES)

CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES

| STUDY | DEPENDENT VARIABLE | $X^2$ | tau-b | OFFENSE | $X^2$ | tau-b | PRIOR RECORD | $X^2$ | tau-b |
|---|---|---|---|---|---|---|---|---|---|
| SELLIN (1928) | sentence | (392.4) (P<.01) | (.008) | felonies | (119.6) (P<.01) | (.036) | | | |
| | | | | misdemenor | (266.4) (P<.01) | (.010) | | | |
| MARTIN (1934) | sentence | (31.97) (P=.01) | (.007) | | | | | | |
| LEMERT ET AL. (1948) | sentence | (20.41) (P<.01) | (.008) | burglary | 19.16 P<.01 | (.021) | none | 3.21 P>.50 | (.016) |
| | | | | 2nd degree auto theft | 15.16 P<.05 | (.014) | some | 15.98 P<.01 | (.080) |
| | | | | narcotics | 7.85 P<.05 | (.047) | | | |
| | | | | assault | 10.09 P>.10 | (.035) | | | |
| | | | | rape | 3.06 P>.10 | (.017) | | | |
| BULLOCK (1961) | sentence | ( 8.37) (P<.01) | (.002) | murder | 8.10 P<.01 | (.004) | | | |
| | | | | rape | 1.92 P<.25 | (.005) | | | |
| | | | | burglary | 14.45 P<.01 | (.010) | | | |
| GREEN (1961) | sentence | 20.5 P<.01 | (.002) | | | | none | 1.00 P>.80 | (.003) |
| | | | | burglary | 4.79 P=.19 | (.006) | some | 4.90 P>.10 | (.015) |
| FORSLUND (1969) | conviction | (43.33) (P<.01) | (.011) | | | | | | |
| SOUTHERN REGIONAL COUNCIL (1969) | sentence | (25.66) (P<.01) | (.025) | | | | none | (10.14) (P<.01) | (.024) |
| | | | | | | | some | (13.74) (P<.01) | (.022) |

TABLE VII, CONTINUED

| STUDY | DEPENDENT VARIABLE | $X^2$ | tau-b | OFFENSE | $X^2$ | tau-b | PRIOR RECORD | $X^2$ | tau-b |
|---|---|---|---|---|---|---|---|---|---|
| NAGEL (1969) | sentence | | | state | ( 1.08) | (.003) | | | |
| | --state | ( 3.53) | (.004) | assault | (P=.30) | | | | |
| | cases | (P>.01) | | state | (26.48) | (.056) | | | |
| | --federal | ( 7.73) | (.013) | larceny | (P<.01) | | | | |
| | cases | (P<.01) | | federal | ( .29) | (.003) | | | |
| | (larceny & assault cases) | | | assault | (P .59) | | | | |
| | | | | federal | ( 8.20) | (.017) | none | ( .52) | (.003) |
| | | | | larceny | (P<.01) | | | (P=.47) | |
| | | | | | | | some | ( 7.51) | (.025) |
| | | | | | | | | (P<.01) | |

Attention is next given to the effect of controlling for the type of offense charged. Although there is some evidence in Table VII of a strenghening of relationships when offense is held constant, the more notable result is an indication once more of the relatively small relationships involved in many of these studies. Thus, while many of the findings reported in Table VII are statistically significant, the median value of tau-b reported in the offense column of this table is .014. In different terms, when the type of offense is controlled, the median increase in the accuracy of prediction of judicial disposition from knowledge of the defendant's race, is 1.4 per cent.

A useful illustration of the uninformative aspects of significance tests is available in Bullock's (1969) data. Bullock presents several tables showing relationships between race and sentencing that are statistically significant at the .01 level. Unfortunately, these tables were percentaged within categories of the <u>dependent</u> variable. Although handling the data in this manner has no effect on calculations of statistical significance, presentation in this form makes interpretation of the results difficult (Zeisel, 1957; Hirschi and Selvin, 1967). In Table VIII, we have repercentaged the original data within categories of the <u>independent</u> variable. The results are informative.

The first section of Table VIII contains all the cases in Bullock's original sample, with the dependent variable dischotomized into "short" and "long" sentences. The percentage difference between blacks and whites receiving short and long sentences is only four per cent, yet this finding is statistically significant at the .01 level. When the type of offense is controlled in the remaining sections of Table VIII, the percentage differences increase somewhat, but fluctuate in direction. Thus, eight per cent of the blacks receive <u>longer</u> sentences for burglary, while seven per cent receive <u>shorter</u> sentences for rape and murder. Fluctuations of this size in the direction of the relationship could easily result from a distortion introduced in the original research when the continuous dependent variable, length of sentence, was dichotomized into the categories "short" and "long." In addition, the differences could result from the failure to hold constant the offenders' prior records. Notwithstanding these possibilities, three of the four relationships illustrated in Table VIII are <u>statistically</u> significant.

Returning our attention to Table VII, we consider next the effects of controlling both for the type of offense charged <u>and</u> the previous record of the offender. Three

TABLE VIII

RACE AND SENTENCING (BULLOCK, 1961)

| Race | Total Cases | | | Burglary Cases | | | Rape Cases | | | Murder Cases | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Per Cent Short Sentences | Per Cent Long Sentences | N | Per Cent Short Sentences | Per Cent Long Sentences | N | Per Cent Short Sentences | Per Cent Long Sentences | N | Per Cent Short Sentences | Per Cent Long Sentences | N |
| Black | 52% | 48% | 1727 | 72% | 28% | 572 | 41% | 59% | 119 | 42% | 58% | 1037 |
| White | 56% | 44% | 1917 | 80% | 20% | 910 | 34% | 66% | 255 | 35% | 65% | 751 |
| $X^2$ | 8.37 | | | 4.45 | | | 1.92 | | | 8.10 | | |
| P | <.01 | | | <.01 | | | <.25 | | | <.01 | | |
| tau-b | .002 | | | .010 | | | .005 | | | .004 | | |

studies (Lemert and Rosberg, 1948; Green, 1961; and Nagel, 1969) have utilized this type of simultaneous control.[9] Each of the three studies dichotomizes the previous record of the offenders in terms of either no previous convictions one or more previous convictions. When both of these controls are introduced, the results of the studies are strikingly consistent. In all three studies, when only those cases of offenders with no previous convictions are considered, the relationships between race and sentencing become statistically insignificant (at the .05 level), with the median tau-b equal to .003. Thus, in this instance, the increase in the accuracy of predicting judicial outcome from knowledge of race is less than one per cent. Alternatively, when those cases involving offenders with "some" previous convictions are considered, the relationships between race and sentencing in two of the three studies retain statistical significance. In these latter instances, tau-b reaches a high value in Lemert and Rosberg's study of .08, and a low value in Green's research of .015. The median tau-b, in this case, is .025, representing a 2.5 percent increase in the accuracy of predicting judicial outcome on the basis of knowledge of race.

An example of the interaction effect just described, undiscussed in the original study, can be illustrated by reconstructing several tables from Nagel's (1969) research.

The reconstructed data is presented in Table IX. The first section of this Table indicates a 14 per cent difference in the rate of imprisonment of black and white offenders. However, when the presence or absence of prior convictions is controlled, the outcome changes. Thus, among offenders with no prior convictions, the difference in the rate of imprisonment for blacks and whites shrinks to six per cent and becomes statistically non-significant at conventional levels. In contrast, among offenders with "some" prior convictions, the racial difference in the rate of incarceration increases to 16 per cent and retains statistical significance.

It is interesting to note two of the interpretations given to the type of findings just reported. Lemert and Rosberg conclude that the statistically significant relationship between race and sentencing for offenders with "some" previous convictions indicates that, "...race prejudice is a more significantly operating variable when groups concerned are definitely stereotyped as criminal" (1948:18). In contrast, Green suggests that the control implied in "one or more" previous convictions, "...is insensitive to possible differences between whites and racial minorities in the <u>number</u> of prior felony convictions, a factor which is very likely to influence the judge's determination of the sentence" (1961:11, emphasis in the

TABLE IX

THE EFFECTS OF CONTROLLING FOR PRIOR CONVICTIONS (NAGEL, 1969)

| Race | Total Federal Larceny Cases | | | Federal Larceny Cases, No Prior Convictions | | | Federal Larceny Cases, Some Prior Convictions | | |
|---|---|---|---|---|---|---|---|---|---|
| | Per Cent Suspended Sentence or Probation | Per Cent Imprisoned | N | Per Cent Suspended Sentence or Probation | Per Cent Imprisoned | N | Per Cent Suspended Sentence or Probation | Per Cent Imprisoned | N |
| Black | 46% | 54% | 152 | 80% | 20% | 37 | 34% | 66% | 110 |
| White | 60% | 40% | 330 | 86% | 14% | 114 | 50% | 50% | 186 |
| $X^2$ | 8.20 | | | .52 | | | 7.51 | | |
| P | <.01 | | | .47 | | | <.01 | | |
| tau-b | .017 | | | .003 | | | .025 | | |

TABLE X

RACE AS THE INDEPENDENT VARIABLE (CAPITAL CASES)

CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES

| STUDY | DEPENDENT VARIABLE | $X^2$ | tau-b | OFFENSE | $X^2$ | tau-b | PRIOR RECORD | $X^2$ | tau-b |
|---|---|---|---|---|---|---|---|---|---|
| JOHNSON (1941) | appellate review | ( .09) (P=.76) | (.001) | sample contains capital cases only | | | | | |
| GARFINKEL (1949) | sentence (murder cases only) | ( 7.57) (P=.02) | (.008) | 1st degree murder | ( 9.83) (P<.01) | (.015) | | | |
| | | | | 2nd degree murder & manslaughter | ( .00) (P=.96) | (.001) | | | |
| JOHNSON (1957) | appellate review (capital cases only) | (11.33) (P<.01) | (.017) | murder | (14.19) (P<.01) | (.029) | | | |
| | | | | rape | ( .92) (P<.30) | (.007) | | | |
| | | | | burglary | ( 1.04) (P>.30) | (.025) | | | |
| BEDAU (1964) | execution | ( 8.20) (P=.02) | (.012) | sample contains capital cases only | | | | | |
| PARTINGTON (1965) | sentence (rape cases only) | (46.06) (P<.01) | (.001) | Att'd rape | (30.26) (P<.01) | (.021) | | | |
| | | | | Att'd stat. rape | ( 2.18) (P=.14) | (.128) | | | |
| | | | | Stat. rape | ( 5.48) (P=.02) | (.013) | | | |
| | | | | Rape | (34.30) (P<.01) | (.006) | | | |
| WOLFGANG (1968) | appellate review (capital cases only | 4.33 P<.05 | (.012) | felony murder | 4.27 P=.04 | (.023) | | | |
| | | | | non-felony murder | .87 P=.35 | (.007) | | | |
| WOLF (1965) | sentence (capital cases only | 4.157 P=.05 | (.031) | felony murder | 2.23 P=.14 | (.036) | | | |
| | | | | non-felony murder | .23 P=.63 | (.004) | | | |

TABLE X, CONTINUED

| STUDY | DEPENDENT VARIABLE | $X^2$ | tau-b | OFFENSE | $X^2$ | tau-b | PRIOR RECORD | $X^2$ | tau-b |
|---|---|---|---|---|---|---|---|---|---|
| BEDAU (1965) | execution | ( .06) (P=.97) | (.001) | sample contains capital cases only | | | | | |
| JUDSON ET AL. (1969) | execution | (10.34) (P=.02) | (.043) | sample contains capital cases only | interval measure | (P<.05) | .001 | | |

*the value reported in this column is $r^2$, a measure analogous in interpretation to tau-b, at an interval level of measurement (See Costner, 1965).

original). Clearly, additional data providing a more systematic control for the number of prior convictions will be necessary before any definitive conclusions can be reached. For the moment, we can only conclude that this version of the "racial hypothesis" remains open to some doubt.

Our attention is directed next to Table X, containing studies concerned primarily with sentencing in capital cases. Findings reported in this table parallel those noted in Table VII. Again the relationships observed are not large. Thus, the median value of tau-b, before controlling for offense, is .012, and .015 after holding offense constant. Knowing the race of the offender in capital cases, then, increases the accuracy of predicting judicial disposition by 1.5 per cent. The causal importance of this relationship, however, is called into doubt by the single study controlling simultaneously for charge and related "third" variables. Thus Judson et al. (1969) report a partial $r^2$ in this context of .001.[10] This relationship is not statistically significant at the .05 level.

## INTER-RACIAL OFFENSES

Finding reviewed to this point suggest some reason to doubt the charge of racial discrimination in sentencing. One plausible path of analysis, however, remains to be examined.

## TABLE XI

## INTER-RACIAL ROBBERY AND BURGLARY*

| Robbery Cases: | N-W | W-W | N-N | Total |
|---|---|---|---|---|
| Observed Means | 27.5 | 22.4 | 14.3 | 21.5 |
| | (51) | (22) | (45) | (118) |
| Expected Means | 27.1 | 21.9 | 15.0 | 21.5 |

| Burglary Cases: | N-W | W-W | N-N | Total |
|---|---|---|---|---|
| Observed Means | 10.62 | 12.28 | 6.96 | 10.3 |
| | (149) | (80) | (66) | (295) |
| Expected Means | 10.44 | 11.88 | 8.30 | 10.3 |

*This table is adapted from Green (1964). N-W=Negro defendant-white victim; W-W=white defendant-white victim; N-N=Negro defendant-Negro victim.

The hypothesis offered for consideration here suggests that it is in the context of inter-racial offenses, particularly those involving blacks victimizing whites, that discrimination is most likely to occur. This proposition has been tested in samples of both capital and non-capital offenses.

Table XI contains the single study (Green, 1964) offering a test of the inter-racial hypothesis in a sample of non-capital cases. Using a mode of analysis somewhat different from that of other studies considered in this review, Green first established the mean sentence received for robbery and burglary offenses in each of three offender-victim groupings. Next, "expected" means were calculated for each of the groupings on the basis of the specific offense, number of bills of indictment, and prior convictions characterizing the cases in each grouping. Comparisons of the observed and expected means, presented in Table XI, reveal that the discrepancies are small, and in no consistent direction. The inter-racial hypothesis thus receives little support from this set of findings.

Turning our attention to Table XII, containing samples of capital cases, we encounter more disturbing findings. In this table, three of the five studies report findings statistically significant at the .05 level, with a median

TABLE XII

INTER-RACIAL CAPITAL CRIMES

CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES

| STUDY | DEPENDENT VARIABLE | OFFENSE | $X^2$ | tau-b | PRIOR RECORD | $X^2$ | tau-b |
|---|---|---|---|---|---|---|---|
| JOHNSON (1941) | Appellate Review | Capital cases | ( 2.37) (P=.12) | (.019) | | | |
| GARFINKEL (1949) | Sentence | 1st Degree Murder | ( 8.38) (P<.01) | (.022) | | | |
| | | 2nd Degree Murder & Manslaughter | ( .167) (P=.68) | (.001) | | | |
| PARTINGTON (1965) | Sentence | Rape Cases Only | ( 5.68) (P=.02) | (.063) | | | |
| WOLFGANG ET AL. (1973) | | Sentence Rape Cases Only | 275.71 P<.05 | (.226) | | | |
| JUDSON ET AL. (1969) | Sentence | Capital Cases | ( .068) (P=.93) | (.001) | | | |

tau-b of .021. The finding causing the most concern, however, is the relationship between race and sentence reported by Wolfgang and Riedel (1973). In this study of inter- and intra-racial rape in eleven southern states, the tau-b relationship between race and sentence is .226. In other words, knowing the inter- and/or intra-racial make-up of rape cases, allows a 22.6 per cent increase in the accuracy of predicting a life or death outcome for the defendants.

Unfortunately, Wolfgang and Riedel have not yet published data relating to a further control for the prior records of the offenders. Instead, they have simply indicated that such a control does not eliminate the statistical significance of the original relationship. Given our earlier discussion of the influence of sample size on the results of significance tests, we clearly cannot base any final conclusions on this information alone. Nevertheless, given the strength of the original relationship, it is safe to conclude that this study raises the suspicion of discrimination, even if it does not definitively establish its existence.

Finally, it should be noted that four of the five studies reported in Table XII were carried out in the southern United States. The single study of sentencing in

inter-racial capital cases conducted outside of the south (Judson et al., 1969), does not report statistically significant differences in the use of the death penalty by the race of offender and victim. The authors note in the text that this relationship remains non-significant in the presence of a control for prior record and several other possible suppressor variables.

## SOCIO-ECONOMIC STATUS AS THE INDEPENDENT VARIABLE

Following race, socio-economic status of the defendant is probably the most common suspect variable in studies of judicial sentencing. Six of the studies examined in this review have focused on the socio- economic status of the offender as an independent variable. These studies are summarized in Tables XIII and XIV.[11]

Looking at Table XIII, containing samples primarily of non-capital cases, we find statistically significant findings both before and after controls for the type of offense. The median tau-b before controlling for type of offense is .020, and .024 after the introduction of this control. Holding offense constant, then, the median increase in the accuracy of predicting disposition, knowing socio-economic status, is 2.4 per cent.

TABLE XIII

SOCIO-ECONOMIC STATUS AS AN INDEPENDENT VARIABLE (NON-CAPITAL CASES)

CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES

| STUDY | DEPENDENT VARIABLE | $X^2$ | tau-b | OFFENSE | $X^2$ | tau-b | PRIOR RECORD | $X^2$ | tau-b |
|---|---|---|---|---|---|---|---|---|---|
| HARTIN (1934) | sentence | (180.63) ( P<.01) | (.004) | | | | | | |
| FORSLUND (1969) | conviction | ( 58.41) (P<.01) | (.016) | | | | | | |
| HAGIL (1969) | sentence | | | state | ( 8.84) | (.024) | | | |
| | --state | (30.88) | (.030) | assault | (P<.01) | | | | |
| | cases | (P<.01) | | state | (23.75) | (.040) | | | |
| | --federal | ( 15.10) | (.023) | larceny | (P<.01) | | | | |
| | cases | (P<.01) | | federal | ( 2.09) | (.017) | | | |
| | (larceny & | | | assault | (P=.14) | | | | |
| | assault | | | federal | (12.70) | | none | ( 1.24) | (.008) |
| | cases) | | | larceny | (P<.01) | (.024) | | (P=.26) | |
| | | | | | | | some | ( 2.76) | (.009) |
| | | | | | | | | (P=.10) | |

The most important findings in Table XIII, however, are found in Nagel's analysis of larceny cases appearing in the federal courts. It was in the instance of federal larceny cases only that Nagel was able to control for both offense type and prior record of the offender. Controlling only for the offense, Nagel's data indicate a statistically significant ($p<.01$) relationship between socio-economic status and sentencing (tau-b=.024). However, when the control for previous record is introduced, the relationship becomes statistically insignificant (at the .05 level) and diminished in strength (tau-b=.008 and .009). When legal factors are held constant, then, knowledge of social class increases accuracy in predicting judicial outcome by less than one per cent.

Somewhat different findings emerge from Table XIV, containing studies whose samples consist mainly of capital cases. While the first two studies in this table (Bedau, 1964; Bedau, 1965) report findings that are statistically non-significant at the .05 level, and weak in strength (tau-b=.002 and .022), the final study, by Judson et al. (1969), reports a relationship between socio-economic status and disposition that is statistically significant at the .001 level, and somewhat stronger in strength (tau-b=.048). This relationship remains substantially unchanged (tau-b=.032), and statistically significant ($p<.01$), following the

TABLE XIV

SOCIO-ECONOMIC STATUS AS THE INDEPENDENT VARIABLE
(CAPITAL CASES)

| STUDY | DEPENDENT VARIABLE | OFFENSE | CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES | | | | |
|---|---|---|---|---|---|---|---|
| | | | $X^2$ | tau-b | PRIOR RECORD | $X^2$ | tau-b |
| BEDAU (1964) | execution | capital cases | ( .73) (P=.69) | (.002) | | | |
| BEDAU (1965) | execution | capital cases | ( 3.23) (P=.20) | (.022) | | | |
| JUDSON ET AL. (1969) | execution | first degree murder | (17.77) (P=.001) | (.048)* | interval measure | (P<.01) | (.032)* |

*the value reported in this colusn is $r^2$, a measure analogous in interpretation to tau-b, at an interval level of measurement (See Costner, 1965).

introduction of controls for prior record and a series of other potentially contaminating variables. There is, then, some evidence of discrimination by social class in the disposition of capital cases in this study of jury sentencing in a non-southern state.

## AGE AND SEX AS THE INDEPENDENT VARIABLES

A final set of tables considers the role of age and sex as independent variables in the process of judicial sentencing. Looking first at Tables XV and XVI, we find a number of studies reporting data on the role of age. Although three of the four studies in Table XV initially report statistically significant relationships between age and disposition, these relationships are consistently small. The median value of tau-b, before controlling for offense type and prior record, is .006. Following the introduction of these controls, Green reports that the relationship loses statistical significance (at the .05 level), and attains a value of tau-b equal to .011. Similarly small relationships are the norm in Table XVI, where studies involving capital cases are summarized.

Tables XVII and XVIII contain data from three studies that have considered the role of sex as an independent variable in the formation of judicial dispositions. The pattern of findings recorded in these tables is consistent

TABLE XV

AGE AS AN INDEPENDENT VARIABLE (NON-CAPITAL CASES)

| | | | | CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| STUDY | DEPENDENT VARIABLE | $X^2$ | tau-b | OFFENSE | $X^2$ | tau-b | PRIOR RECORD | $X^2$ | tau-b |
| HARTIN (1934) | sentence | (14.01) (P<.01) | (.015) | | | | | | |
| GREEN (1961) | sentence | 60.30 P<.01 | (.007) | burglary | | | none | 4.0 P>.20 | (.011) |
| FORSLUND (1969) | conviction | (22.49) (P<.01) | (.006) | | | | | | |
| NAGEL (1969) | sentence | | | state assault | ( 1.33) (P=.25) | (.004) | | | |
| | --state cases | (1.92) (P=.17) | (.002) | state larceny | ( 4.61) (P=.03) | (.011) | | | |
| | --federal cases | (1.38) (P=.24) | (.001) | federal assault | ( .07) (P=.79) | (.001) | | | |
| | (larceny & assault cases) | | | federal larceny | ( 1.82) (P=.18) | (.003) | | | |

TABLE XVI

AGE AS THE INDEPENDENT VARIABLE (CAPITAL CASES)

CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES

| STUDY | DEPENDENT VARIABLE | OFFENSE | | | PRIOR RECORD | | |
|---|---|---|---|---|---|---|---|
| | | | $X^2$ | tau-b | | $X^2$ | tau-b |
| BEDAU (1964) | execution | capital cases | (3.84) (P=.15) | (.008) | | | |
| WOLFGANG ET AL. (1962) | appellate review | capital cases | (27.44) (P<.01) | (.067) | | | |
| WOLF (1965) | sentence | capital cases | .43 P=.51 | (.008) | | | |
| BEDAU (1965) | execution | capital cases | ( 1.24) (P=.54) | (.005) | | | |
| JUDSON ET AL. (1969) | execution | first degree murder | ( .35) (P=.56) | (.001) | | | |

with that contained in the findings derived from Green's research (1961). Green's data indicate that when sex of the offender and final sentencing decision are related, without controlling for additional legal variables, the result is a tau-b of .005, a finding significant at the .02 level. However, when offense type is held constant, and when only those cases of offenders with no previous convictions are considered, the resulting relationships are reduced below statistical significance, and the values attained by tau-b are .001 and .004. This pattern is repeated in a study of capital cases by Judson et al. (1969). Thus it can be tentatively concluded that the sex of the defendant plays a negligible role in the formation of judicial dispositions.

## DISCUSSION

The central finding of this review has been that of a generally small relationship between extra-legal attributes of the offender and judicial disposition in studies of criminal sentencing. In more specific terms, the findings of the review can be summarized with reference to each of the four attributes considered:

(a) Race: Some evidence of discrimination was found in the sentencing of inter-racial capital cases in the southern United States. In samples of non-capital cases, however, when offense type was held constant among offenders with no prior record, the relationship between race and disposition was diminished below statistical significance. Again holding

TABLE XVII

SEX AS AN INDEPENDENT VARIABLE (NON-CAPITAL CASES)

| STUDY | DEPENDENT VARIABLE | $X^2$ | tau-b | CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES: OFFENSE | $X^2$ | tau-b | PRIOR RECORD | $X^2$ | tau-b |
|---|---|---|---|---|---|---|---|---|---|
| HARTIN (1934) | sentence | (3.29) (P=.99) | (.001) | | | | | | |
| GREEN (1961) | sentence | 9.1 P<.02 | (.005) | felony | | | none | .02 P=.99 | (.001) |
| | | | | misdemeanor | | | none | 1.45 P>.30 | (.004) |
| NAGEL (1969) | sentence | | | | | | | | |
| | --state cases | (2.77) (P=.10) | (.006) | state assault | ( .66) (P=.42) | (.002) | | | |
| | --federal cases (larceny & assault cases) | ( .37) (P=.54) | (.001) | state larceny | ( 6.46) (P=.01) | (.011) | | | |
| | | | | federal assault | ( .08) (P=.78) | (.001) | | | |
| | | | | federal larceny | ( 1.54) (P=.21) | (.003) | | | |

TABLE XVIII

SEX AS THE INDEPENDENT VARIABLE (CAPITAL CASES)

CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES

| STUDY | DEPENDENT VARIABLE | OFFENSE | $X^2$ | tau-b | PRIOR RECORD | $X^2$ | tau-b |
|---|---|---|---|---|---|---|---|
| BEDAU (1964) | execution | capital cases | 7.52 P<.01 | (.033) | | | |
| JUDSON ET AL. (1969) | execution | first degree murder | (10.49) (P=.001) | (.041) | interval measure | P>.05 | (.006)* |

*the value reported in this column is $r^2$, a measure analogous to tau-b, at an interval level of measurement (See Costner, 1965)

offense type constant, this time among offenders with "some" previous convictions, a modest, statistically significant relationship between race and disposition was sustained in two of three studies. The need for a more definitive control over the number of previous convictions was indicated.

(b) Socio-Economic Status: With social class as the variable of concern, some evidence of discrimination was again found in sentencing in capital cases, this time in a non-southern state. This finding withstood controls for legally significant factors. In a sample of non-capital cases, however, the relationship between class and disposition was diminished in strength, and reduced below statistical significance, by holding constant the effects of offense type and prior record.

(c) Age and Sex: In capital and non-capital cases alike, initial relationships between both age and sex, and judicial disposition, were reduced below statistical significance by the introduction of controls for legally relevant factors.

Several comments regarding the above findings may be helpful in placing them in proper context. First, it should be noted that capital cases constitute a relatively small proportion of those cases heard in the criminal courts. Second, samples of capital cases used in the studies we have considered often have included sentencing decisions made as far back as the turn of the century. Third, capital cases are frequently tried before juries, rather than judges. Thus, several of the studies of sentencing in capital cases deal with jury dispositions only (Wolf, 1965; Judson et al., 1969), while others concerned with inter-racial offenses

are, in effect, focusing primarily on jury decisions (see Garfinkel, 1949:403). Such studies may, then, say more about the inadequacies of our jury system, particularly as it has been involved in the invocation of the death penalty, than about the larger operations of our judicial system taken in a contemporary context.

In commenting on the findings recorded in this review, it is also important to note that the authors of the original articles often suggested the occurrence of unjust differences in sentencing, where our analysis has frequently indicated the weakness of the evidence "supporting" such inferences. One plausible explanation of this discrepancy returns us to a concern, voiced at the outset of this paper, regarding the uncritical use of tests of significance. In these initial remarks, it was noted that a liability of conclusions formed on the basis of significance tests alone is the tendency to confuse substantive and causal significance with statistical significance, thus short-circuiting the search for alternative explanations of relationships. In the studies reviewed, analysis frequently stopped short of the consideration of important legal variables, while at the same time overlooking the size of the relationships reported.

Finally, the central finding of our discussion needs to

be reemphasized. Our review of the data from twenty American studies of judicial sentencing indicates that, while there may be some evidence of differential sentencing, knowledge of extra-legal offender characteristics contributes relatively little to our ability to predict judicial dispositions. The instances in which knowledge of extra-legal attributes of the offender increased our accuracy in predicting judicial disposition by more than five per cent were a rarity.

## CONCLUSION

Data presented in this Chapter are generally not supportive of the strong statements frequently made about the role of extra-legal attributes in criminal sentencing. One response to the findings will be the suggestion that the data considered do not adequately address all of the issues involved. In particular, it may be argued that criminal sentencing must be studied as a process that often disadvantages minority group defendants at stages <u>preceding</u> sentencing. The current study includes a partial test of this viewpoint by focusing on three stages in the sentencing process: (1) the activities involved in criminal prosecution; (2) the probation officer's involvement in the presentencing process; and (3) incarceration and treatment. In order to maximize the use of our resources, we will

confine our attention to the two extra-legal attributes given prominence by our review of the literature: race and socio-economic status. Finally, the present study is distinguished from previous research by its attention to a minority group infrequently considered- Native Persons- in a setting previously unexamined- the Province of Alberta.

## FOOTNOTES

[1]The term "extra-legal attributes" is used in this discussion to refer to perceived characteristics of the offender that are formally extraneous, by law, to the imposition of sentence.

The term "sociological viewpoint" is used in a restrictive sense to refer to a popular emphasis on extra-legal attributes in studies of sentencing. There are, of course, other sociological views on sentencing, and some of these are considered in the conclusion to this chapter.

[2]Studies were originally located by consulting previous discussions of the sentencing literature (Overby, 1971; Green, 1971; Hannheim, 1968), a bibliography on sentencing research (Tompkins, 1971), Abstracts on Criminology and Penology, and Sociological Abstracts. A purposive sample of twenty studies, and tables therein, was then selected on the basis of three criteria: (1) public availability, (2) attention to variables of concern, and (3) frequency of citation in the literature.

[3]One misguided reason for the use of large samples in sentencing studies is the problematic assumption that such a procedure will randomize the effects of extraneous variables. This assumption is, of course, fallacious.

[4]Labovitz makes a similar point in the following manner:

> It may be argued that significance tests at best provide the absolute minimum of knowledge, e.g., whether or not 'r' is significantly different from zero....But a zero relation... is useless to refute. Most things (and perhaps all things) are statistically related, if only to a very small degree. The surprising case is the zero relation, which is more likely in small samples than in large (1969:143).

[5]For an excellent discussion of the techniques of causal analysis, and the use of statistical controls for the test of alternative explanatory hypotheses, see Hirschi and Selvin (1967:35-174). This discussion will also be useful in distinguishing the different techniques used in introducing statistical controls in tabular, as contrasted with multivariate, analysis.

[6]One of the studies (Jacob, 1962) did not present data

in a manner suited to inclusion in this table; two other studies (Green, 1964; Wolfgang and Riedel, 1973) are reserved for consideration in Tables IIIA and IIIB.

[7]A copy of the tables used in this review is available, on request, from the author. For a discussion of the methods of secondary analysis used in this review, see Hirschi and Selvin (1967: Chap. 3).

[8]Chi square was chosen as the test of significance in this review because of its frequent use in the original studies. For a discussion of the chi square test of significance, see Blalock (1960:212-221). Goodman and Kruskal's tau-b was selected as the measure of association on the basis of its proportional-reduction-in-error (PRE) interpretation (see Costner, 1965), and further on the basis of the measure's performance in a recent "test of validity" by Hunter (1973). For a discussion of tau-b, see Blalock (1960:232-234).

[9]It should be noted that Lemert and Rosberg's study additionally involves a control for occupational status. A fourth study, by the Southern Regional Council (1969), did not control for previous record simultaneously with offense, and therefore is not included in this discussion.

[10]For a discussion of the techniques of partial correlation, see Blalock (1960: Chap. 19). For a discussion of the particular partial correlation procedures used in this instance, see Judson et al. (1969).

[11]In five of these studies (Martin, 1934; Forslund, 1969; Bedau, 1965; and Judson et al., 1969), the indicator of socio-economic status is occupation; in the sixth study (Nagel, 1969), the indicator is "indigent" or "nonindigent" financial status.

# CHAPTER III:

# THE METHODOLOGY: TABULAR AND MULTIVARIATE TECHNIQUES IN THE STUDY OF SENTENCING

## THE METHODOLOGY: TABULAR AND MULTIVARIATE TECHNIQUES IN THE STUDY OF SENTENCING

Our review of American research on extra-legal attributes and criminal sentencing revealed two basic problems: (1) the need to control systematically in such studies for legal and extra-legal variables involved in sentencing, and (2) the importance of determining the degree to which legal and extra-legal characteristics are predictive of variation in sentencing. Both of these factors weigh heavily in the choice of a method of analysis for the current study.

More than a decade ago, Wolfgang et al. (1962) suggested the need for caution in interpreting the results of research on discrimination in sentencing: "Because there are always many difficulties encountered when seeking to hold constant a variety of factors in the personal and social background of offenders who appear before the courts, carefully controlled research in this area of differential judicial treatment is still in its nascency" (302). An indication of the extent of the problem is provided more recently by Wolfgang and Riedel (1973:127-128) in a list of the variables considered relevant in a study of the imposition of the death penalty for rape:

1. Offender characteristics
    a. age

b. marital status
c. prior criminal record
d. previous imprisonment
e. employment status

2. Victim characteristics
   a. age
   b. marital status
   c. dependent children
   d. prior criminal record
   e. reputation for chastity

3. Nature of relations between victim and offender
   a. offender known to victim
   b. prior sexual relations

4. Circumstances of offense
   a. contemporaneous offense
   b. type of entry-- authorized or unauthorized
   c. location of offense-- indoor or outdoor
   d. display of weapon
   e. carrying of weapon
   f. amount of injury to victim
   g. threatened victim
   h. degree of force employed
   i. victim made pregnant by offense
   j. one or more multiple offenders
   k. date of offense

5. Circumstances of the trial
   a. plea
   b. defense of insanity
   c. appointed or retained counsel
   d. length of time of trial
   e. defense of consent
   f. whether defendant testified

The difficulty involved in considering this many independent variables is, of course, that in tabular analysis the number of cases available for manipulation will seldom be sufficient for the task. Hirschi and Selvin make this point graphically in a comparison of the efficiency of

regression and tabular techniques: "A sample of two hundred cases is large enough to compute a regression equation of fifty variables, but a sample of two thousand cases may not be large enough to examine the joint effects of five variables in a percentaged table" (1967:167). In short, whenever the tabular analyst needs to examine the simultaneous effects of more than two or three independent variables, he is likely to run out of cases.

The inefficiency of tabular analysis frequently leads to serious problems of inference. For example, because of his inability to consider all of the independent variables simultaneously, the tabular analyst never knows how much of the variation in the dependent variable he has explained, or, even more importantly, whether his overlapping sets of independent variables may have explained the same variation more than once. Approached from a different angle, this problem produces difficulties in causal inference. A hypothetical example, abstracted from the sentencing literature, will help to clarify the problem of causal inference in tabular analysis.

It is very common to find four intercorrelated independent variables associated with final disposition in studies of sentencing. These variables are: race, number of current charges, prior convictions, and gravity of offense.

However, because it would require an extremely large sample to consider the effects of all four of these independent variables at once, the tendency in tabular analysis is to proceed by dropping one of these variables from consideration. Given our disciplinary biases, it would be the rare sociologist who would in this situation eliminate the racial variable from his analysis; thus, one of the legal variables will customarily be the first to go. This is, in fact, the pattern suggested in our review of the sentencing literature. In any event, it is now that the problem of causal inference emerges. Given that the legal variable dropped from the analysis is inter-correlated with the remaining independent variables, and thus likely to be responsible for some part of the latter variables' effect on final disposition, the causal meaning of any one of the following tables will be a matter of some doubt. In particular, we will not be able to make any causal inferences regarding the impact of race, without engaging in a suspect assumption about its relationship with the missing legal variable.

All of this is not to say, of course, that tabular analysis is entirely without use to the social scientist. The technique remains a particularly valuable vehicle for the presentation of findings to both lay and professional audiences. In addition, tabular analysis provides a

convenient means of exploring interaction effects among variables. Tables will be used for both of these purposes in the Chapters that follow, particularly Chapter Six. For the main part of our analysis, however, we will take advantage of the possibilities made available in regression analysis.

The use of regression techniques, under suitable conditions, allows an increase in the power, efficiency, and precision of data analysis. A basic feature of regression analysis that facilitates these improvements is the utilization of relations between pairs of variables to build up more complex relationships. A consequence is that there is almost no limit to the number of independent variables that can be examined at one time, a situation far different from that noted in tabular analysis. It is not surprising, then, that regression analysis has attracted a great deal of interest, in recent years, in the field of sociology.

A basic issue in the use of regression analysis in social research has consisted of evaluating the consequences of assuming equal intervals for ordinal scales. Regression analysis is premised on the measurement of variables on an interval level (i.e., in established and equidistant numerical quantities), while many of the variables we wish to consider are frequently measured on ordinal scales (i.e., values of these variables can be ranked in increasing or

decreasing order, but the values do not represent actual numerical quantities). Two basic responses have emerged to this problem. The first is simply to treat ordinal variables as if they conformed to interval scales, by assigning numbers to the ordered categories. The second response involves a technique for testing the possible distortions introduced by such treatment.

Sanford Labovitz has probably been the most persuasive advocate of the treatment of ordinal variables as interval scales. It is argued that, "... treating ordinal variables as if they are interval has these advantages: (1) the use of more powerful, sensitive, better developed and interpretable statistics with known sampling error, (2) the retention of more knowledge about the characteristics of the data, and (3) greater versatility in statistical manipulation..." (1970:523). Labovitz subtantiates these arguments with empirical evidence that the treatment of ordinal variables as interval measures is accompanied by only small "errors," when the basis of comparison is the use of more conventional measures (1967:1970). The conclusion is that the benefits of this approach far outweigh the liabilities involved.

Boyle (1970) has gone one step further by explicating a technique, within the framework of regression analysis, for investigating the "distortions" introduced in treating

ordinal data as interval. This approach is variously known as "dummy variable" analysis[1], the investigation of "degenerate dichotomies," and the use of "binary variables." Beyond explicating this technique, Boyle (1970) has contributed an empirical examination of the effects of analyzing a set of data in three ways: (1) with tabular techniques, (2) using dummy variable analysis, and (3) by assigning intervals to ordinal variables and applying regression techniques. The results of this examination indicated that the tabular analysis led to misleading causal inferences; in contrast, the latter two approaches produced very similar findings. Boyle's conclusion reinforces that of Labovitz in suggesting that it is generally not dangerous to assume an interval scale based on ordered categories. All of this is best summarized in the advise of Bohrnstedt and Carter: "... when one has a variable which is measured at least at the ordinal level, parametric statistics not only can be, but should be, applied" (1971:132, emphasis added).

With this endorsement, our attention turns next to a consideration of the techniques of regression analysis itself. As a preface to this discussion it will be helpful to consider, first, the foundations of correlation analysis. Correlation analysis, like the method of crosstabulation, allows the researcher to measure the degree of covariation between two variables. However, instead of examining the

joint frequency distribution of two variables in tabular form, correlation analysis indicates the strength of association through a process of statistical estimation, resulting in a single summary statistic: the correlation coefficient ($r_{ij}$).

Having described the function of the correlation coefficient, it is a relatively simple step to the conceptualization of multiple regression: "Multiple regression is an extension of the bivariate correlation coefficient to multivariate analysis. The correlation coefficient, or normalized simple regression coefficient, allows the researcher to measure the linear relationship between one independent variable and a dependent variable. Multiple regression allows one to study the linear relationship between a set of independent variables and a number of dependent variables while taking into account the interrelationships among the independent variables. If the simple correlation coefficient is viewed as the continuous analog of two-way crosstabulation, then multiple regression is the continuous analog of a n-way crosstabulation" (Nie et al., 1970:175).

The guiding principle of multiple regression analysis involves producing a linear combination of independent variables that correlates as highly as possible with the

dependent variable. The difference between the value of the dependent variable and the value predicted by the linear combination of the independent variables is known as the residual, or the error term. Representing the dependent variable as D, the independent variables as I's, the unstandardized regression coefficients as b's, a constant as c, and the error term or residual as r, the equation representing multiple regression is as follows:

$D = b^1I^1 + b^2I^2 + \ldots + b\ I + c + r$

Our attention turns finally to a consideration of path coefficients. Path coefficients ($P_{ij}$) are simply <u>standardized</u> regression coefficients. They are calculated by multiplying the unstandardized coefficient by the ratio of the standard deviation of the independent variable to the standard deviation of the dependent variable. Values of path coefficients range from one to minus one. A particular path coefficient, "...measures the fraction of the standard deviation of the endogenous variable (with the appropriate sign) for which the designated variable is <u>directly</u> responsible in the sense of the fraction which would be found if this factor varies to the same extent as in the observed data while all other variables (including residual variables) are constant" (land, 1969:8-9).

A path coefficient, then, indicates the proportion of

variance in the dependent variable that is directly, or solely, attributable to variance in a specific independent variable, controlling for all other variables assumed to be causally antecedent in the model.

Path coefficients linking variables in ordered series can be multiplied for the purpose of calculating indirect effects. For example, assume that we are interested in determining the indirect effect of race on final disposition, as this effect is mediated by the intervening variable prior record. If race ($X^1$) is linked to prior record ($X^2$) by a path coefficient $p^{21}$; and prior record ($X^2$) is linked to final disposition ($X^3$) by a path coefficient $p^{32}$; then the product of these path coefficients ($p^{21}p^{32}$) will indicate the indirect effect of race, operating through the variable prior record, on final disposition.

Manipulation of correlation and path coefficients in the terms discussed forms a basis for the data analysis in the chapters that follow.

## FOOTNOTES

[1]Dummy variable analysis involves recoding a parent variable in a dichotomized form, with the categories coded as "0" and "1". For example, to treat a trichotomous variable X (originally coded as 0,1, and 2) as a dummy variable, we need two recodings of the variable as indicated in the following table:

| Parent Variable X | Recodings $X^1$ | $X^2$ |
|---|---|---|
| 2..... | 1 | 1 |
| 1..... | 0 | 1 |
| 0..... | 0 | 0 |

If we are interested in the regression on X of some dependent variable Y, we can then study the multiple regression on Y of the corresponding pair of dummy variables. Using this procedure, the two dummy variables will separate out the effects of first moving from the lower to middle category, and then from the middle to the upper category of X (cf. Boyle, 1970).

# CHAPTER IV:

# PROSECUTION AND SENTENCING: AN ANALYSIS OF TRANSACTIONS IN A PROSECUTOR'S OFFICE

# PROSECUTION AND SENTENCING: AN ANALYSIS OF TRANSACTIONS IN A PROSECUTOR'S OFFICE

A sociological concern with the process of criminal sentencing is well-demonstrated by the studies reviewed in Chapter Two. Similarly well-established is a sociological interest in the process of criminal prosecution (e.g., Newman, 1956; 1966; Miller, 1970). Surprisingly, however, the two concerns have not been linked systematically in empirical research. The tendency, instead has been to treat sentencing and prosecution as separate dependent variables, to be linked individually to other variables in the legal process. In this Chapter, we will combine consideration of prosecution and sentencing in a single path model. Before turning to the analysis itself, however, we will review several approaches taken to the study of criminal prosecution.

## THE LITERATURE

The process of criminal prosecution is a subject of international concern (Dando, 1970; Grossman, 1969; 1970; Jescheck, 1970; Lafave, 1970), an issue of constitutional debate (Chambliss, 1970), a forum for social theoretical speculation (e.g., Blumberg, 1967a; Chambliss and Seidman, 1971; Sudnow, 1965), and a focus of empirical research (e.g., Vetri, 1974; Newman, 1956). In this discussion, we

will confine our attention to several theoretical and empirical discussions of criminal prosecution.

Two dominant theoretical approaches can be discerned. Although the approaches are not mutually exclusive, they differ in emphasis, focusing on two distinct concepts: bureaucratization and class conflict.

Blumberg (1967a) focuses on the role of bureaucratization in Anglo-American systems of criminal justice. Drawing on Weber's discussions of the process of rationalization in modern legal systems, it is argued that the proper focus for study lies in the organization of the criminal court: "Sociologists and others have focused their attention on the deprivations and social disabilities of such variables as race, ethnicity, and social class as being the source of an accused person's defeat in a criminal court. Largely overlooked is the variable of the court organization itself, which possesses a thrust, purpose, and direction of its own" (1967a:19). Blumberg argues that bureaucratic demands for efficiency exert an exogenous influence on the prosecution process. These organizational pressures are operationalized procedurally through the actions of defense counsel, client and prosecutor in the process of plea negotiation (1967b).

Chambliss and Seidman differ from Blumberg in assigning

an intervening role to procedural variables in the causal sequence (1971). Arguing from a Marxian view of class conflict, negotiation between defense counsel and prosecutor is conceptualized as a mediating mechanism that facilitates protection of the powerful and exploitation of the powerless. Procedural variables thus assume an endogenous position, subject to the direct effects of the social class position of the defendants involved: "How favorable a 'bargain' one can strike with the prosecutor in the pretrial confrontations is a direct function of how politically and economically powerful the defendant is. In terms of day-to-day prosecutorial activities, what this comes down to is that the lower class, indigent, and minority group member is most likely to be prosecuted for his offenses...." (1971:412).

Moving from theory to research, two empirical studies are available for review. Vetri (1964) has published results of a survey questionaire completed by prosecutors in forty three states. It is important to note that the response rate to the questionaire was low (40 per cent), and also that the accuracy of the responses obtained is dependent on the honesty and perceptiveness of the respondents involved. Nonetheless, the findings are of interest. Among findings relevant to our discussion, it is reported that prosecutors consider prior convictions and multiple charges as important

factors in the decision to alter charges.

Newman's (1956) study of the prosecution process used as its data source the recollections of ninety-seven felons under active sentence. Although this study is also limited by the accuracy of the respondents' reports, it is again of importance in terms of the insights offered for further research. Data reported by Newman cast doubt on the class-based hypotheses of Chambliss and Seidman. For example, when defendants were compared in terms of their initial pleas, no significant differences were found by education, occupation, and residence. Similarly, "An analysis of the sample of offenders showed no clear cut categories separating bargained and non-bargained convictions" (1956:789). Nevertheless, Newman reports that among those cases where negotiations were perceived to have occured, approximately 33 per cent involved communication regarding alteration of charges, while 67 per cent involved discussion of sentencing considerations. A concluding hypothesis suggests that, "The way bargaining now works, the more experienced criminals can manipulate legal processes to obtain light sentences and better official records ...." (1956:790).

Our discussion of the literature relating to criminal prosecution suggests several different theses. Chambliss and Seidman clearly hypothesize that class conflict,

operationalized through the extra-legal attributes of the defendants, is a dominant disadvantaging factor in the process of criminal prosecution. Just as clearly, Blumberg argues that the prosecution process is guided by a set of bargaining procedures whose thrust is constrained more by organizational priorities than class interests. Newman, in contrast, argues that it is the "conviction-wise" offender who benefits from the prosecutorial process. Finally, Vetri indicates that a number of more conventional legal variables must be considered in discussions of criminal prosecution.

Unfortunately, although the literature surrounding the prosecution process is helpful in isolating potentially important variables, it does not suggest a set of propositions sufficiently precise to allow a deductive model-testing approach to the research problem. In response to this situation, techniques of path analysis will be used inductively in determing causal linkages between the variables concerned (Heise, 1969).

## THE SAMPLE AND METHODOLOGY

The sample consists of 1018 cases drawn at random from files covering a six month period of prosecutions in the city of Edmonton. The 1018 cases involved over 1500 charges. Our primary interest, as in previous studies, was in the offender as the unit of analysis. Thus, it was necessary to

select the salient charge facing each offender. This was accomplished by choosing the offense assigned the most severe sentence. If no charge received sentence (i.e., if all charges were dismissed), or if the sentences were of equal severity, the offense provided the most severe sentencing option by statute was chosen. Three groups of independent variables, presented in Table XIX, are considered in the analysis. The instrument used in collecting the data is presented in Appendix I. A brief discussion of each set of variables follows, with the order of presentation representing an assumed sequence of temporal and/or logical priority.

The first group of variables consists of extralegal offender characteristics: race ($X^1$) and socio-economic status ($X^2$). The racial background of the defendant was indicated as (1) white or (2) Indian or Metis on the basis of designation as such in the case file.[1] The presence of persons of Indian descent in the sample can be considered an asset in this part of our investigation. In comparison with other North American groups, it can plausibly be argued that Indian and Metis defendants understand less, and resist least, their fate in the hands of the law. Thus, if there is racial disadvantage in criminal prosecution, it would seem likely that Native persons would be among those experiencing the worst effects. Additional information on the current

TABLE XIX: VARIABLES IN THE PROSECUTION ANALYSIS

| Notation | Variable | Scale | | | |
|---|---|---|---|---|---|
| $X^1$ | Race | White | (1) | Indian & Metis | (2) |
| $X^2$ | Socioeconomic Status (Index: Edward's Social-Economic Grouping of Occupations) | Professional, Technical and Related Workers | | | (1) |
| | | Business Managers, Officials, and Proprietors | | | (2) |
| | | Clerical and Related Workers | | | (3) |
| | | Craftsmen, Foremen, and Related Workers | | | (4) |
| | | Operatives and Related Workers | | | (5) |
| | | Laborers | | | (6) |
| $X^3$ | Prior Arrests* | None | (1) | One or More | (2) |
| $X^4$ | Legal Seriousness of Initial Charge (measured as maximum statuatory sentence) | 6 Months | (1) | 7 Years | (6) |
| | | 18 Months | (2) | 10 Years | (7) |
| | | 2 Years | (3) | 14 Years | (8) |
| | | 3 Years | (4) | Life or Death | (9) |
| | | 5 Years | (5) | | |
| $X^5$ | Number of Charges | One | (1) | Six | (6) |
| | | Two | (2) | Seven | (7) |
| | | Three | (3) | Eight | (8) |
| | | Four | (4) | Nine or More | (9) |
| | | Five | (5) | | |
| $X^6$ | Defense Counsel | No | (1) | Yes | (2) |
| $X^7$ | Initial Plea | Guilty | | | (1) |
| | | Plea Reserved or Withheld | | | (2) |
| | | Not Guilty | | | (3) |
| $X^8$ | Charge Alterations | No Charge Alteration | | | (1) |
| | | Secondary Charge Alteration | | | (2) |
| | | Primary Charge Alteration | | | (3) |

*Ideally, it would have been preferable to consider prior record as an interval variable. Unfortunately, prosecutor's office files contained this information in a dichotomized form.

TABLE XIX, CONTINUED

| Notation | Variable | Scale | |
|---|---|---|---|
| $Y^9$ | Final Disposition | Charge Dismissed | (1) |
| | | Absolute Discharge | (2) |
| | | Conditional Discharge or Fine | (3) |
| | | Probation | (4) |
| | | Prison | (5) |

or customary occupations of the defendants was gathered from the files, and socio-economic status was determined according to Edward's Social-Economic Grouping of Occupations.[2]

The second group of variables includes legally defined offender and offense characteristics: prior arrests ($X^3$), legal seriousness of the initial charge ($X^4$), and the number of charges ($X^5$). Information regarding the presence of prior arrests and the number of charges currently facing the offender was obtained directly from the files. The seriousness of the initial charge selected for analysis was operationally defined in terms of the maximum sentence provided for the offense in the Criminal Code of Canada (Martin et al., 1972).

The third group of variables involves procedural factors: presence of defense counsel ($X^6$), initial plea ($X^7$), and charge alteration ($X^8$). The presence or absence of defense counsel and the nature of the initial plea were recorded from the files. The type of initial plea was then ranked according to the intensity of the denial of guilt indicated: (1) plea of guilty, (2) plea reserved or witheld, (3) plea of not guilty.

Measurement of charge alteration presented a more difficult problem. Discussions of charge alteration have

typically focused on the distinction between situationally and necessarily included offenses (Sudnow, 1965), the nature of the interaction between the negotiating parties (Blumberg, 1967b), and the disjunction between expected and effected sentencing "considerations" (Newman, 1956). However, in the jurisdiction studied, judges customarily sentence offenses concurrently. Thus, more important than any of the previously mentioned concerns, for the purpose of predicting final disposition, is an indication of the particular charge being altered. In short, the most important consideration for the defendant is whether or not the most serious charge facing him is changed. Thus, charge alterations are ranked in our analysis as follows: (1) no charge alteration, (2) secondary charge alteration, (3) primary charge alteration.[3]

The dependant variable for our analysis is the final disposition received by the offender. Ranking of this variable was determined by the degree of guilt and/or restriction of civil liberties involved in the final disposition (cf. Green, 1961). Thus, the distinction between charge dismissal and absolute discharge is based on the acknowledgement of guilt involed in the latter disposition. Each of the following dispositions conditional discharge or fine, probation, and prison involves a successive increase in the curtailment of the civil liberties of the offender.[4]

The technique used in the analysis of the data is step-wise multiple regression. Dichotomized measures included in the analysis are treated as "dummy variables" (Boyle, 1970), while the remaining ordinal variables are assumed to approximate the characteristics of interval measures.[5] This strategy follows from the discussion presented in Chapter Three.

## THE ANALYSIS

Correlation coefficients ($r_{ij}$) relating the nine variables involved in the analysis are presented in Table XX. Using step-wise multiple regression, this matrix forms the basis for the calculation of the path coefficients ($P_{ij}$) presented in Table XXI.

As indicated earlier, because previous discussions of prosecution and sentencing are ambiguous in the causal linkages proposed, an inductive strategy is used in developing the path model presented in Figure I. Each endogenous variable is in turn considered as a dependent variable and regressed on all causally antecedent independent variables. Path coefficients are selected for the model (from Table XXI) on the basis of two criteria: (1) attainment of statistical significant at the .01 level[6], and (2) explanation of more than one per cent of the variation in

TABLE XX:

CORRELATION COEFFICIENTS FOR PROSECUTION VARIABLES*

| | $X^2$ | $X^3$ | $X^4$ | $X^5$ | $X^6$ | $X^7$ | $X^8$ | $X^9$ |
|---|---|---|---|---|---|---|---|---|
| $X^1$ | .15 | .17 | .11 | .03 | .01 | .03 | -.04 | .07 |
| $X^2$ | | <-.01 | .16 | <-.01 | -.03 | -.01 | -.08 | .13 |
| $X^3$ | | | -.07 | .12 | .06 | .05 | .05 | .13 |
| $X^4$ | | | | -.01 | .17 | .26 | <-.01 | .12 |
| $X^5$ | | | | | .20 | .06 | .35 | .16 |
| $X^6$ | | | | | | .55 | .26 | -.04 |
| $X^7$ | | | | | | | .27 | -.25 |
| $X^8$ | | | | | | | | -.27 |

*N=1018

TABLE XXI:

PATH COEFFICIENTS FOR PROSECUTION VARIABLES

| | $X_2$ | $X_3$ | $X_4$ | $X_5$ | $X_6$ | $X_7$ | $X_8$ | $X_9$ |
|---|---|---|---|---|---|---|---|---|
| $X_1$ | .15** | .18** | .10 | <.01 | -.01 | <.01 | -.04 | <.01 |
| $X_2$ | | -.03 | .14** | <-.01 | .05 | -.03 | -.06 | .08 |
| $X_3$ | | | -.09 | .12** | .05 | .04 | <-.01 | .13** |
| $X_4$ | | | | <-.01 | .18** | .18** | -.06 | .18** |
| $X_5$ | | | | | .20** | -.05 | .32** | .24** |
| $X_6$ | | | | | | .53** | .08 | .12* |
| $X_7$ | | | | | | | .32** | -.31** |
| $X_8$ | | | | | | | | .30** |
| Cumulative $R^2$ | .02 | .03 | .04 | .01 | .07 | .34 | .20 | .24 |

* Statistically significant at the .01 level.
** Statistically significant at the .01 level and explains more than one per cent of the variation in the endogenous variable.

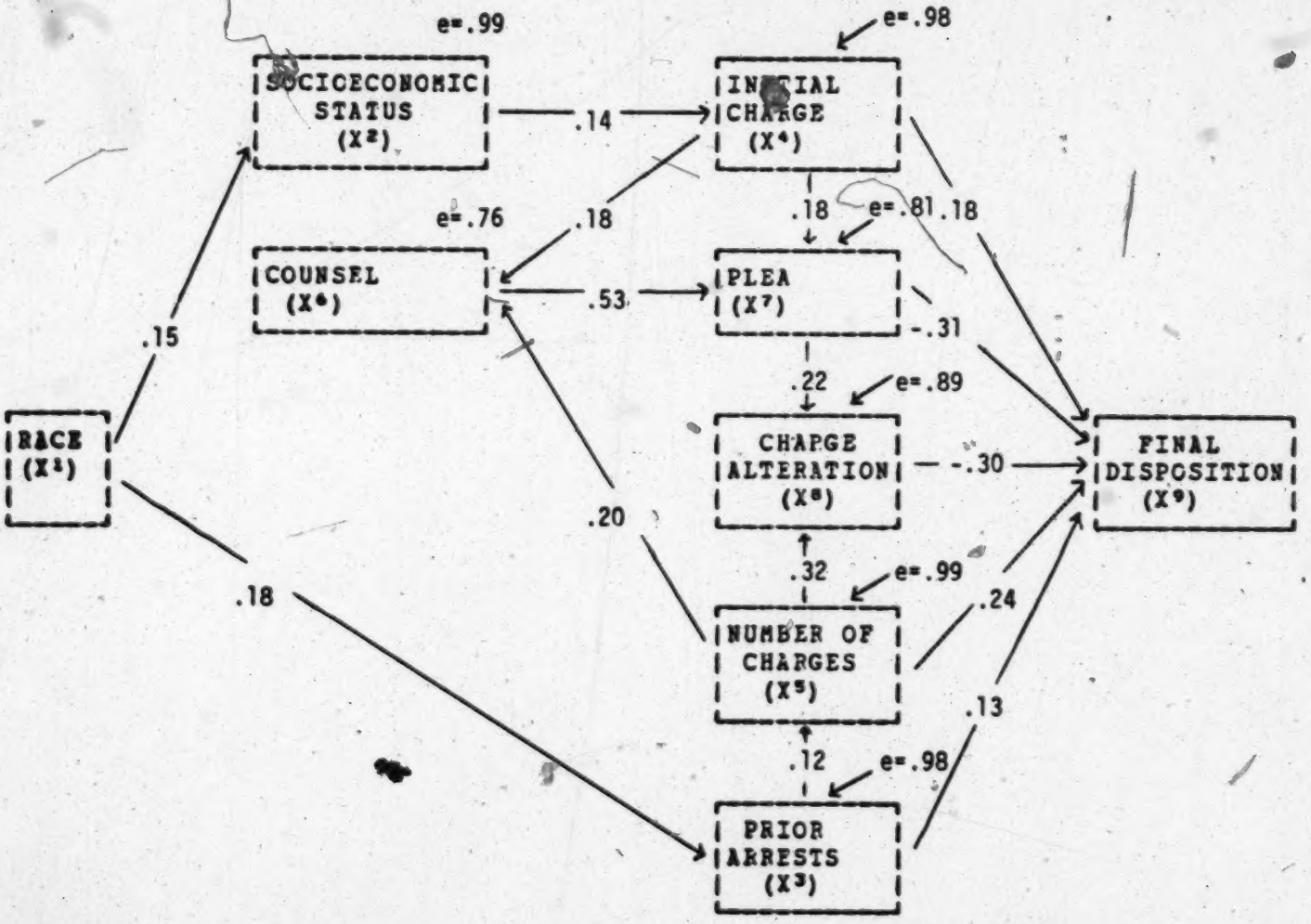
the endogenous variable.[7] The resulting model can be discussed in terms of the three groupings of variables originally described.

Our attention is directed first to the three procedural variables: defense counsel, initial plea, and charge alteration. Charge alteration has an inverse direct effect on the final disposition ($P^{98}$) of -.30, indicating that as the primacy of charge alteration increases, the severity of the final disposition diminishes. In different terms, those who experienced charge alterations were more likely to receive lenient dispositions. Similarly, the defendant's initial plea has an inverse direct effect on final disposition ($p^{97}$) of -.31. Assertion of innocence, in short, is linked to favorability of disposition.

The nature of the causal sequence is elaborated with consideration of the role of defense counsel. Presence of counsel operates indirectly through plea and charge alteration again to effect inversely the severity of final disposition. With initial plea alone as the mediating variable, the indirect effect of defense counsel on final disposition ($P^{7}*P^{97}$ = .53 X -.31) is -.16. Added to this finding is the indirect influence of defense counsel operating through initial plea and charge alteration ($P^{7}*P^{87}P^{98}$ = .53 X .22 X -.30 = -.03). The resulting

FIGURE I:

A PATH MODEL OF PROSECUTION AND SENTENCING



estimate of the indirect effect of defense counsel on final disposition is -.19 (i.e., $p_{76}p_{97} + p_{76}p_{87}p_{98} = -.16 + -.03$).

Our focus shifts next to legal variables included in the model. Each legal variable directly effects final disposition, as well as directly or indirectly effecting a procedural variable. Final disposition is linked with: (1) the initial charge, by a path coefficient ($P_{94}$) of .18; (2) the number of charges, by a path coefficient ($P_{95}$) of .24; and (3) prior arrests, by a path coefficient ($P_{93}$) of .13. Thus, the seriousness of the initial charge, the number of immediate charges, and the number of prior arrests are all substantively and causally related to final disposition.

Seriousness of the initial charge and the number of charges are also related directly to the presence of defense counsel by respective path coefficients ($P_{64}P_{65}$) of .18 and .20. Further, the number of charges operates through presence of defense counsel to produce an indirect effect on the initial plea ($P_{65}P_{76}$) of .11. Finally, the number of charges facing an offender has a direct effect on charge alteration ($P_{56}$) of .32. As we might expect, then, the presence of multiply charged offenses is directly and indirectly related to the probability of alteration in charges.

Our attention turns finally to the role of extra-legal offender characteristics in the prosecution and sentencing process. Links between these and other variables in the model are as conspicuous in their absence as they are in their presence. For example, it is important to note that there are no direct links between race or socioeconomic status and the three procedural variables included in the model. Percentage comparisons, by race, for the three procedural variables, are provided in Table XXII. Thus, while 33.4 per cent of the white defendants retained counsel, 35.[illegible] per cent of the Native defendants were also represented by counsel; while 26.2 per cent of the white defendants entered pleas of not guilty, 30.8 per cent of the Native defendants also denied their guilt; and while 9.6 per cent of the whites received primary charge alterations, 9.1 per cent of the Native persons similarly benefited from alterations in primary charges. These findings suggest that Indian and Metis defendants, no less than their white counterparts, are the beneficiaries of the procedural maneuvers that characterize the prosecutorial process.[a]

It is of further importance to note that extra-legal offender characteristics are <u>not</u> directly linked to final disposition in our model. In fact, the <u>only</u> connection of extra-legal offender characteristics to the remainder of the

TABLE XXII:

PROPORTION OF NATIVE AND WHITE DEFENDANTS WHO RETAIN COUNSEL, DENY GUILT, AND RECEIVE PRIMARY CHARGE ALTERATIONS

Procedural Variables

| Race | Defense Counsel Retained | Initial Plea of Not Guilty | Primary Charge Alteration |
|---|---|---|---|
| White | 33.4% (291) | 26.2% (226) | 9.6% (86) |
| Indian & Metis | 35.1% (40) | 30.8% (36) | 9.1% (11) |

model is through the mediating influence of legal variables. Thus, race is linked directly to prior arrests by a path coefficient ($P_{31}$) of .18, while socioeconomic status has a direct effect on initial charge of .14. Finally, the direct effect of race on socioeconomic status is indicated by a path coefficient ($P_{21}$) of .15. Summarizing, the effect of race and socioeconomic status on prosecution and sentencing is indirect, and mediated by legal considerations.

## DISCUSSION AND CONCLUSIONS

THe results of our analysis suggest some support for Blumberg's focus on the role of organizationally constrained procedures in the prosecutorial and sentencing process. Procedural variables were prominantly positioned in the path model developed, with the presence of defense counsel, the initial plea, and charge alteration all playing an important role in determining final disposition. Remaining findings provided mixed support for the alternative viewpoints discussed at the outset of this Chapter.

In contrast with the class-conflict perspective represented in the work of Chambliss and Seidman, race and socio-economic status were <u>not</u> demonstrated to be influential in the prosecution and sentencing process. This aspect of our analysis replicated several of Newman's findings. Thus, no direct links were found between extra-

legal offender characteristics and the presence of defense counsel, initial plea, charge alteration, or final disposition. In sum, the argument that "bargain justice" is a password for "class justice" was unsupported.

The effects of social class and race in our model were indirect and mediated by the intervening influence of legal variables: prior arrests, initial charge, and number of charges. These variables, in turn, were linked directly and indirectly to procedural variables in the model. Finally, each of the legal variables was linked directly to final disposition.

Additional results of our analysis failed to confirm Newman's hypothesis that "conviction-wise" offenders are at an advantage in the prosecution process. The relationship between prior record and initial plea was insignificant. Similarly, the relationship between prior record and charge alteration was indirect and weak. Nonetheless, confirmation was provided for the expectation that offenders with more extensive cases (i.e., involving multiple charges) are more likely to experience alterations in charges. This finding suggests a possible tendency to "over-charge" offenders in anticipation of "rewards" to be distributed later in the bargaining process. This type of pattern would be compatible, of course, with Blumberg's discussions of the

efficiency-generating mechanisms involved in criminal prosecution.

## FOOTNOTES

[1]Persons of Indian and Metis background are combined in one category in the same sense that persons of mixed white and Negro background are usually treated synonymously with Negroes, for the purpose of study. The concern is not with the biological accuracy of these designations, but rather with the presumed consequences of the attribution of racial status.

[2]For a discussion of this scale, see Miller (1970).

[3]The frequency distribution of charge alterations is as follows: (1) no charge alteration: N=594; (2) secondary charge alteration: N=326; (3) primary charge alteration: N=98.

[4]The frequency distribution of final dispositions is as follows: (1) charge dismissal: N=142; (2) absolute discharge: N=25; (3) conditional discharge or fine: N=678; (4) probation: N=74; (5) prison: N=99.

[5]A preliminary effort to treat the ordinal measures as dummy variables did not yield large differences in the path coefficients calculated; this approach was therefore terminated.

[6]The F-test is used as the test of significance. For a discussion of this test, see Blalock (1960:266-269).

[7]For a discussion of the liabilities of using significance tests alone as the criterion for selecting causal paths, see Heise (1969:61) and Chapter Two of this thesis.

[8]The contribution of legal aid activities to these findings is uncertain.

# CHAPTER V:

# THE PRESENTENCING PROCESS: THE ROLE OF THE PROBATION OFFICER

# THE PRESENTENCING PROCESS: THE ROLE OF THE PROBATION OFFICER

Probation is the legal version of a second chance, offering the offender the freedom to try again, and providing society the opportunity to avoid the costs of imprisonment. The use made of probation, then, has important consequences for both conceptions of individual justice and measures of social efficiency. Recognizing this, North American systems of criminal justice have developed presentencing procedures designed to assist the judiciary in its decision-making responsibilities. The most popular of these judicial aids involves the use of probation officers to conduct presentence investigations. These investigations are recorded in the form of sociolegal histories, usually culminating in a recommendation for disposition. Attention is directed in this chapter to the involvement of the probation officer, and the influence of his actions, in this decision-making process.

## STUDIES OF THE PRESENTENCING PROCESS

While follow-up studies of the effectiveness of probation are common, research relating to the presentencing responsibilities of probation officers is scarce.[1] The research that is available is largely exploratory and descriptive. For example, the largest study of the

presentencing process is reported in a series of monographs, authored by Lohman, Wahl, and Carter, titled the San Francisco Project Series. Securely established in this research is the close association between final dispositions and presentence recommendations, and the relationship of current offense and prior record information to these recommendations (Lohman et al., 1966). Also suggested is the possible importance of employment information to presentence recommendations. The interpretation of these findings, however, is correlational, rather than causal.

In an attempt to determine an order in the probation officer's considerations, Carter (1967) developed a "decision-game" to study presentence recommendations. Five experimental cases were content analyzed into twenty-four separate items of indexed information. Probation officers were then asked to select among the items in the order usually followed in reaching a decision. The results again indicated the salience of current offense and prior record information in the formation of recommendations. However, a series of other items relating to personal stability were also selected frequently in the decision-making process.

A final discussion of the presentencing role of the probation officer is provided by Carter and Wilkins (1967). This study again underlines the strong relationship between

presentence recommendations and final dispositions, and suggests the inference that probation officers rather than judges may be a source of the disparities frequently observed in sentencing patterns. Carter and Wilkins emphasize the importance of this suggestion for future sentencing research.

Following leads of the studies discussed, this chapter examines the role of the probation officer in the sentencing process. Attention is again given in this analysis to three types of variables: extra-legal offender characteristics (racial background and socio-economic status), legal offender and offense characteristics (prior convictions, offense, and number of charges), and procedural factors (perception of demeanor, perceived success prospects, and recommendation for sentence). Finally, the dependent variable is again the final disposition of the case.

## THE SAMPLE

The sample considered in this Chapter consists of questionnaires completed by probation officers in all offices of the Adult Probation Department of Alberta, during a four month period from February 1 to June 1, 1973. 1000 questionaires were initially mailed to all probation offices in the Province, with each office receiving a proportional number based on the average monthly volume of presentence

reports prepared. The Senior Probation Officer in each office was in turn asked to distribute the questionaires to his officers in proportion to the number of presentence reports typically completed in a one month period. Each questionaire was to be filled out simultaneously with the presentence report involved, and returned immediately in a pre-addressed envelope provided. 761 questionaires were returned in this manner, indicating a response rate of more than 76 per cent. This rate of response compares well with other survey studies of judicial decision-making[2], and favorably with survey research in general (see Shannon, 1948; Karlinger, 1964; Leslie, 1972).

The 761 questionaires report information drawn from presentence reports involving 1161 offenses. As in the previous Chapter, the offender is the unit of analysis. This was accomplished by selecting for consideration the offense that received the most severe sentence. In case of "ties," the offense provided the most severe sentencing option by statute was chosen. Consideration of other charges facing an offender was provided by indicating, for each offender, the number of charges involved.

The questionaire, reproduced in Appendix II, was designed to follow the format used in preparation of presentence reports. Two exceptions to this pattern involve

an item asking for the probation officer's evaluation of the client's prospects for successful probation adjustment, and a set of five items asking the officer's assessment of the client's demeanor. These items are discussed more extensively in the section that follows.

## THE VARIABLES

The variables considered in this analysis, and the scales used in their measurement, are listed in Table XXIII. A brief discussion of each variable follows. The order of discussion represents an assumed temporal sequence.

Extra-legal offender characteristics included in the analysis are race ($X^1$) and socio-economic status ($X^2$). The racial background of the offender is indicated by the probation officer's designation as (1) white or (2) Indian or Metis. Edward's Social-Economic Grouping of Occupations again provides an index of socio-economic status. Probation officers were asked to place offenders in one of the six scale groupings on the basis of the offender's occupation, when employed.

Legal offender and offense characteristics considered in the analysis included prior convictions ($X^3$), offense seriousness ($X^4$), and the number of charges ($X^5$). Probation officers were asked to indicate the number of previous

TABLE XXIII: VARIABLES IN THE PRESENTENCING ANALYSIS

| Notation | Variable | Scale | | | |
|---|---|---|---|---|---|
| $X^1$ | Race | White | (1) | Indian & Metis | (2) |
| $X^2$ | Socio-economic Status (Index: Edward's Social-Economic Grouping of Occupations) | Professional, Technical and Related Workers | | | (1) |
| | | Business Managers, Officials, and Proprietors | | | (2) |
| | | Clerical and Related Workers | | | (3) |
| | | Craftsmen, Foremen, and Related Workers | | | (4) |
| | | Operatives and Related Workers | | | (5) |
| | | Laborers | | | (6) |
| $X^3$ | Prior Convictions | One | (1) | Six | (6) |
| | | Two | (2) | Seven | (7) |
| | | Three | (3) | Eight | (8) |
| | | Four | (4) | Nine or | |
| | | Five | (5) | More | (9) |
| $X^4$ | Legal Seriousness of Offense (Measured as Maximum Statuatory Sentence) | 6 Months | (1) | 7 Years | (6) |
| | | 18 Months | (2) | 10 Years | (7) |
| | | 2 Years | (3) | 14 Years | (8) |
| | | 3 Years | (4) | Life or | |
| | | 5 Years | (5) | Death | (9) |
| $X^5$ | Number of Charges | One | (1) | Six | (6) |
| | | Two | (2) | Seven | (7) |
| | | Three | (3) | Eight | (8) |
| | | Four | (4) | Nine or | |
| | | Five | (5) | More | (9) |
| $X^6$ | Perception of Demeanor (5 Item Guttman Scale) | Very Favorable | | | (1) |
| | | Favorable | | | (2) |
| | | Neutral | | | (3) |
| | | Unfavorable | | | (4) |
| | | Very Unfavorable | | | (5) |
| $X^7$ | Evaluation of Prospects for Success on Probation | Very Favorable | | | (1) |
| | | Favorable | | | (2) |
| | | Neutral | | | (3) |
| | | Unfavorable | | | (4) |
| | | Very Unfavorable | | | (5) |

TABLE XXIII, CONTINUED

| Notation | Variable | Scale | |
|---|---|---|---|
| $X^6$ | Recommendation | Absolute Discharge | (1) |
| | | Conditional Discharge or Fine | (2) |
| | | Probation | (3) |
| | | Prison | (4) |
| $X^7$ | Final Disposition | As Above | |

convictions of each offender on the basis of information made available to them through the R.C.M. Police Crime Index. Offense seriousness was measured in terms of the maximum sentence provided for the specific offense in the Criminal Code of Canada (Martin et al., 1972). The number of charges facing an offender was indicated by a simple count of the offenses listed for each offender on the questionaire involved.

The three procedural variables examined in the analysis are the probation officer's perception of the offender's demeanor ($X^6$), evaluation of the prospects for a successful probation adjustment ($X^7$), and recommendation for sentence ($X^8$). Five items were included on the questionaire to assess the probation officer's perception of the offender's demeanor. Thus, the officer was asked to indicate if the offender: "understands the charges," "is polite," "is cooperative," "acknowledges his guilt," and indicates remorse." A computer program (Nie et al., 1970: Chapter 16) was then used to test the adequacy of these items, as ordered, in the formation of a Guttman Scale.[3] The results of this analysis were a coefficient of reproducibility of .99 and a coefficient of scalability of .91. These figures are well above conventional standards used in the assessment of Guttman Scales.[4] On this basis, a new variable, "demeanor," was created out of the original five items.

Assuming that recidivism was a major concern in developing recommendations, an item was included on the questionaire to indicate the officer's evaluation of the offender's prospects for success, if given probation. Officers were given a choice on a Likert type scale of response to record their evaluations.[5]

The role of the probation officer in the presentencing process culminates with his recommendation of sentence to the court. The probation officers were asked to indicate this recommendation for each case considered. Following Green (1961:23), the recommendations were ranked in terms of the degree of deprivation of civil freedom involved.. This criterion resulted in a scale of four types of recommended sentences: (1) absolute discharge, (2) conditional discharge or fine, (3) probation, and (4) prison. Again following Green, when a case resulted in more than one type of sentence (e.g., probation and prison) the categorization was in terms of the more severe type of penalty.

Finally, the dependent variable for the analysis is the disposition imposed as sentence ($X^9$). It is standard practice in the Province to indicate the final disposition at the end of the presentence report. This was correspondingly the last item of information requested on the questionaire. The responses were coded in a manner

identical to the recommendations for sentence.

## RECOMMENDATIONS AND DISPOSITIONS

Earlier studies of the presentencing process have repeatedly emphasized the strong relationship between the recommendations for sentence made by probation officers and the final dispositions of the courts. The relationship between these two variables in the current study is shown in Table XXIV. Before discussing this Table, however, it is important to note that the total number of cases involved is somewhat smaller than the number of offenders in the original sample. This difference reflects the <u>explicit</u> policy in one jurisdiction of the Province not to ask for a recommendation from the probation officer.[6]

Most striking in Table XXIV are the large percentages and cell frequencies present in the diagonal stretching from the upper left hand corner to the lower right hand corner of the table. Each of these cells represents a high level of agreement between recommendation and disposition, ranging from a low of 66.7 per cent agreement to a high of 85.4 per cent agreement. Summing the cases of agreement, and dividing by the total number of cases in the Table, reveals that the probation officers and judges are in agreement 79.7 per cent of the time. While this level of agreement is not quite so high as that revealed in earlier studies, it is nonetheless

TABLE XXIV:

CROSS-CLASSIFICATION OF PROBATION OFFICERS' RECOMMENDATIONS AND JUDICIAL DISPOSITIONS

Final Dispositions

| Recommendations | Absolute Discharge | Conditional Discharge or Fine | Probation | Prison | |
|---|---|---|---|---|---|
| Absolute Discharge | 66.7% (12) | 27.8% (5) | 5.6% (1) | 0% (0) | 18 |
| Conditional Discharge or Fine | 6.2% (5) | 66.7% (54) | 23.5% (19) | 3.7% (3) | 81 |
| Probation | .6% (5) | 10.0% (32) | 82.2% (264) | 6.2% (20) | 321 |
| Prison | 1.2% (1) | 2.4% (2) | 11.0% (9) | 85.4% (70) | 82 |
| | 23 | 93 | 293 | 93 | 502 |

Chi Square = 611.91
P<.001
Gamma = .88

indicative of a high degree of consensus.

A second concern with Table XXIV involves consideration of the instances when probation officers and judges are in disagreement. By summing the cell frequencies to the right of the original diagonal, and repeating this procedure on the left hand side of the diagonal, we are provided figures indicating the instances in which judges are more or less punitive than probation officers in their sentencing decisions. In 48 instances, judges in the sample exceeded probation officers' recommendations in the severity of sentences imposed; in 54 instances, the judges were more lenient than the probation officers. In addition to a high level of agreement between the two parties, then, there is also an indication of <u>balance</u> in the directions of their disagreement.

## A MODEL OF THE PRESENTENCING PROCESS

Given the strong relationship between disposition and recommendation, our attention shifts next to the development of a path model linking remaining elements of the presentencing process to this recommendation, and in turn, to final disposition. The strategy is to explore inductively the influence of five extra-legal and legal attributes of the offenders (race, socio-economic status, prior convictions, offense seriousness, and number of charges),

TABLE XXV:

CORRELATION COEFFICIENTS FOR PRESENTENCING VARIABLES*

| | $X^2$ | $X^3$ | $X^4$ | $X^5$ | $X^6$ | $X^7$ | $X^8$ | $X^9$ |
|---|---|---|---|---|---|---|---|---|
| $X^1$ | .13 | .19 | -.04 | -.11 | .10 | .22 | .25 | .14 |
| $X^2$ | | .10 | .16 | .02 | .11 | .22 | .24 | .16 |
| $X^3$ | | | .08 | .08 | .07 | .41 | .35 | .30 |
| $X^4$ | | | | .16 | -.03 | .12 | .31 | .30 |
| $X^5$ | | | | | -.02 | .11 | .20 | .19 |
| $X^6$ | | | | | | .34 | .13 | .12 |
| $X^7$ | | | | | | | .52 | .42 |
| $X^8$ | | | | | | | | .72 |

*N = 761

TABLE XXVI:

PATH COEFFICIENTS FOR PRESENTENCING VARIABLES

| | $X^2$ | $X^3$ | $X^4$ | $X^5$ | $X^6$ | $X^7$ | $X^8$ | $X^9$ |
|---|---|---|---|---|---|---|---|---|
| $X^1$ | .13** | .18** | -.07 | -.12** | .08 | .12** | .15** | -.03 |
| $X^2$ | | .08 | .16** | <.01 | .10** | .13** | .09* | -.03 |
| $X^3$ | | | .08 | .09* | .05 | .35** | .13** | .05 |
| $X^4$ | | | | .15** | -.05 | .07* | .22** | .08* |
| $X^5$ | | | | | <-.01 | .08* | .13** | .04 |
| $X^6$ | | | | | | .30** | -.03 | .02 |
| $X^7$ | | | | | | | .38** | .05 |
| $X^8$ | | | | | | | | .66** |
| Cumulative $R^2$*** | .02 | .04 | .04 | .04 | .02 | .32 | .40 | .53 |

* Statistically significant at the .01 level.
** Statistically significant at the .01 level and explains more than one per cent of the variation in the endogenous variable.

operating through three procedural variables (the probation officer's perception of demeanor, evaluation of prospects for successful probation adjustment, and recommendation for sentence), in determination of the dependent variable: final disposition.

We begin this process by providing the correlation matrix presented in Table XXV. Correlation coefficients ($r_{ij}$) reported in this Table form the basis for a step-wise multiple regression analysis used in calculating the path coefficients ($P_{ij}$) reported in Table XXVI.

Directing our attention first to the correlation coefficients reported in Table XXV, we are reminded of the dramatic influence of the probation officer's presentence recommendations: recommendations account for approximately 50 per cent of the variation in final dispositions $(r^{98})^2 = (.72)^2 = .52$. The salient correlate of recommendation, in turn, is the probation officer's evaluation of the offender's success prospects. Success prospects account for 27 per cent of the variation in recommendations $(r^{97})^2 = .27$. Following success prospects in the zero-order strength of their relationship with recommendation are prior record $(r^{93})^2 = .12$, offense seriousness $(^{94})^2 = .10$, race $(r^{91})^2 = .06$, socio-economic status $(r^{92})^2 = .06$, number of charges $(r^{95})^2 = .04$, and perceived demeanor $(r^{96})^2 = .02$. These figures

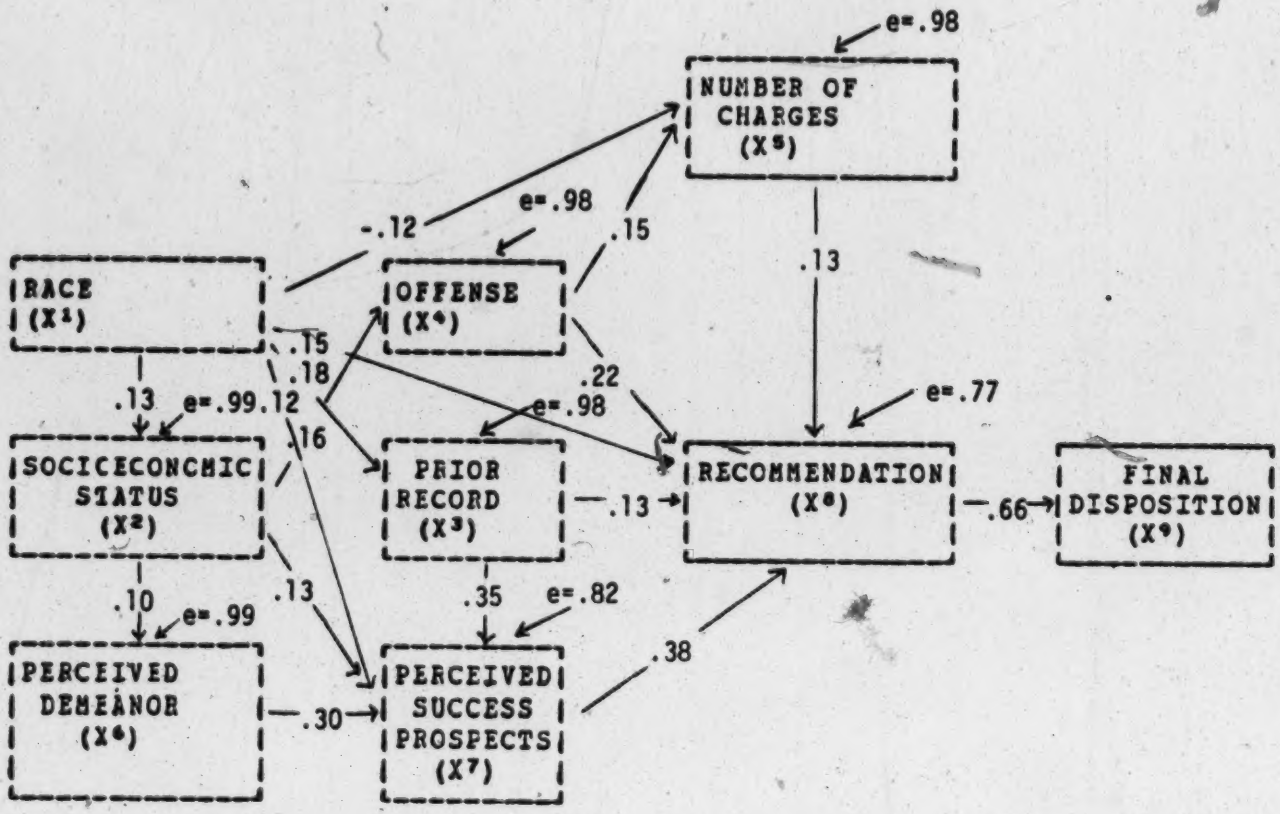
provide a preliminary impression of the relative importance of the variables included in this analysis.

Our next step is to use the path coefficients reported in Table XXVI to develop a path model of the presentencing process. Path coefficients are selected for representation in this model on the basis of the same criteria used in Chapter IV: (1) attainment of statistical significance at the .01 level[7], and (2) explanation of more than one per cent of the variation in the dependent variable.

The resulting path model is presented in Figure II. Causal chains leading to final disposition in this model can be discussed in terms of the three groups of variables involved. Looking first at the procedural variables, a series of moderately strong direct effects are observed. This sequence leads from the probation officer's perception of the defendant's demeanor to perceived prospects for a successful probation adjustment ($P^{76}$=.30); from this assessment to the recommendation for sentence ($P^{87}$=.38); and from recommendation to final disposition ($P^{98}$=.66). Each of the links in this chain also interprets an indirect effect of a preceding variable on a variable that follows. For example, probation officers' perceptions of success prospects have a relatively strong indirect effect on final disposition. This indirect relationship is mediated by the

FIGURE II:

A PATH MODEL OF THE PRESENTENCING PROCESS



intervening influence of the probation officers' recommendations for sentence. Thus, when the path coefficients involved are multiplied ($P_{87}P_{98}$), the product (.38 X .66) is a measure of the strength of the indirect effect: .25. This finding indicates that probation officers' recommendations are the important intervening link in translating their perceptions into judicial dispositions.

Expanding our attention to legal variables in the model, we encounter several important relationships. First, the prior record of the offender has both a direct and indirect effect on the recommendation for sentence. The direct effect of prior record on recommendation ($P_{83}$) is .13. The indirect effect is equal in strength and operates through the probation officer's perception of the prospects for a successful probation adjustment ($P_{73}P_{87}$=.13). In short, the probation officer seems to use past performance as a predictor of future outcomes. The defendant's offense and the number of charges against him also influence directly the probation officer's recommendation ($P_{84}$=.22; $P_{85}$=.13).

Our attention turns finally to the rather complex role of extra-legal variables in the presentencing process. To simplify this discussion, we will focus on the role of race, treating socio-economic status as an intervening variable.

Race has both a direct ($p_{81}$=.15) and indirect effect on the recommendation for sentence. Although neither of these effects taken separately is strong, taken together they are of interest and concern.

The <u>indirect</u> effect of race on recommendation has legal, extra-legal, and procedural components. Among legal considerations, the number of charges, prior record, and the instant offense all play an intervening role. The influence of each of these variables is indicated in the equations that follow:

(1) $p_{51}p_{85}$ = -.016 (race → number of charges → recommendation)
(2) $p_{31}p_{83}$ = .023 (race → prior record → recommendation)
(3) $p_{31}p_{73}p_{87}$ = .023 (race → prior record → success prospects → recommendation)
(4) $p_{21}p_{42}p_{84}$ = .004 (race → socio-economic status → offense → recommendation)

The sum of these indirect effects is .034; legal variables, then, mediate in a small way the relationship between race and recommendation.

Socio-economic status, perception of demeanor, and perceived prospects for successful probation adjustment mediate further the relationship between race and recommendation. Three equations reveal the influence of these variables:

(1) $p_{71}p_{87}$ = .046 (race → success prospects → recommendation)
(2) $p_{21}p_{72}p_{87}$ = .008 (race → socio-economic status →

(3) $p_{21}p_{62}p_{76}p_{87} = .001$ success prospects → recommendation) (race → socio-economic status → demeanor → recommendation)

The sum of the indirect effects represented by these equations is .054. This figure added to the direct effect of race on recommendation, indicates a total effect, exclusive of legal considerations, of .20.[8] Race, then, does have a modest direct and indirect effect on recommendations for sentence.

## DISCUSSION AND CONCLUSION

Findings reported in the preceding pages indicate that the formation of presentence recommendations is an important, but complex, process. Preliminary data reported in Table XXV suggested that procedural variables, specifically the probation officer's recommendation and his evaluation of the offender's prospects for a successful probation adjustment, predominate as influences in the presentencing process. Two legal variables, offense seriousness and prior record, also appeared to exert an influence in the formation of recommendations; the extra-legal variables, race and socio-economic status, seemed to have somewhat less influence. Finally, the number of charges and perceived demeanor appeared initially to be of minor consequence.

The path analysis summarized in Figure II confirmed

many of these impressions. The core part of the path model illustrated the role of recommendation, success prospects, prior record, and offense seriousness. In contrast with the impression conveyed by the initial data, however, perceived demeanor was revealed to have a modest indirect influence on recommendation. This variable operated through the probation officer's evaluation of the offender's success prospects. Finally, the related influences of race and socio-economic status remained modest, but stubborn, in their apparent causal influence (i.e., legal variables could not be shown to mediate a large part of the original relationships). It is of interest to note, however, that some part of the small influence of race and socio-economic status on recommendation is mediated by the probation efficer's evaluation of the offender's prospects for success on probation.

There is some indication in these findings that a pessimistic "group image" of the Native and poor offender influences the probation officers' recommendations. Follow-up studies of probation suggest the foundation of this group image: Native and lower socio-economic status offenders recidivate far more frequently than their non-Native and higher socio-economic status counterparts (Bricker, 1973; Landis et al., 1969). In short, there is a discomforting actuarial basis for pessimism in the probation officers'

estimations of the probationary risks posed by such offenders. Insofar as the probation officer is held accountable for recidivism associated with his recommendations, it should perhaps not come as a surprise that this consideration operates to some extent in his deliberations. Future research should, however, remain sensitive to the possibility that the probation officer's projection of success prospects may have a self-fulfilling effect. These findings also encourage the search for alternatives to imprisonment that would minimize the risks of probation, while reducing the social and economic costs of incarceration. We will return to these considerations in the following chapters of this thesis.

## FOOTNOTES

[1]For a review of studies of the effectiveness of probation, see Hood and Sparks (1970:Chapter 6). For a brief discussion of the use of presentence reports in a Canadian province, see Hogarth (1971:237-243;246-265).

[2]For example, Kalven and Zeisel's classic study of The American Jury used as data information collected from approximately one third of the respondents initially contacted (1960:36).

[3]Guttman scales have two distinguishing characteristics. First, they are unidimensional: the component items all measure movement toward or away from the same single underlying object. Second, they are cumulative: the component items are ordered in "difficulty" such that respondents who react positively to a difficult item will with few exceptions react similarly to less difficult items (Nie, et al., 1970:197).

[4]For a discussion of these statistics, see Nie (1970:201). A general guideline to the interpretation of the coefficient of reproducibility is that a value of .9 or higher is necessary to indicate a valid scale; the coefficient of scalability should be higher than .6 if the scale is to be considered unidimensional and cumulative.

[5]The response options are indicated in Table XXIII. The function of a Likert-tyle scale is to guage the subject's intensity of response on a range between two extremes (e.g., very favorable-very unfavorable).

[6]Although in this jurisdiction it is not the practice to formally provide a recommendation for sentence, this recommendation may nonetheless be offered by informal means.

[7]The F-test is used as the test of significance. For a discussion of this test, see Blalock (1960:259-261).

[8]This figure is rounded to two places.

# CHAPTER VI:

# INCARCERATION AND TREATMENT: THE SOCIAL CONSEQUENCES OF SENTENCING

## INCARCERATION AND TREATMENT: THE SOCIAL CONSEQUENCES OF SENTENCING

With good reason, incarceration is a penalty of last resort. Discussions of imprisonment seldom note the infrequency with which incarceration is imposed as a primary sentencing option. The sample of cases drawn from the Crown Prosecutor's Office in the City of Edmonton provides an appropriate example. Incarceration, without the option of fine payment or probation, was the sentence imposed in less than ten per cent of the cases considered. Similarly absent from many discussions is an indication of the major reason why the use of incarceration is restricted: the economic cost of imprisonment is prohibitive. At present standards, it costs up to thirty dollars a day to incarcerate a single offender (Bricker, 1973). These facts provide a context for the analysis of incarceration and treatment that follows.

### THE SAMPLE

The sample of incarcerated offenders was collected by visiting the five largest correctional institutions operated by the Province of Alberta. Offenders serving time in these institutions do so in one of two ways: (1) they are sentenced directly to prison, or (2) they are incarcerated in default of fine payments. The analysis that follows is designed to investigate the relationship of race to

imprisonment in both of these circumstances. Attention is also given to the treatment received following imprisonment.

The sample consists of the cases of all offenders sentenced and admitted to the five provincial institutions during a two month period, from February 15 to April 15, 1973.[1] Information relating to each case was abstracted by the researcher and an assistant from one thousand inmate files, and recorded on the data collection instrument presented in Appendix III. As in previous chapters, the offender was the unit of analysis. In order to treat the offender as the unit of analysis, it was necessary to select the salient charge involved in each case. This was accomplished by choosing the offense assigned the most severe sentence (cf. Green, 1961).

## ANALYSIS OF THE DATA

Analysis of the data takes place in four stages, involving four dependent variables: (1) length of imprisonment, (2) option of fine payment, (3) amount of fine, and (4) type of institutional confinement. Nine variables considered in the various stages of the analysis are presented in Table XXVII.

Information relating to each of the nine variables was recorded from the inmate files and coded as indicated in the

TABLE XXVII: VARIABLES IN THE INCARCERATION AND TREATMENT ANALYSIS

| Notation | Variable | Scale | | | |
|---|---|---|---|---|---|
| $X^1$ | Race | White | (1) | Indian & Metis | (2) |
| $X^2$ | Prior Convictions | None | | | (1) |
| | | 1-5 | | | (2) |
| | | 6-10 | | | (3) |
| | | 11 or more | | | (4) |
| $X^3$ | Legal Seriousness of Offense (measured as maximum imprisonment allowable by statute) | 6 Months* | (1) | 7 Years | (6) |
| | | 18 Months | (2) | 10 Years | (7) |
| | | 2 Years | (3) | 14 Years | (8) |
| | | 3 Years | (4) | Life or Death | (9) |
| | | 5 Years | (5) | | |
| $X^4$ | Legal Seriousness of Offense (measured as maximum fine allowable by statute) | $100 | | | (1) |
| | | $200 | | | (2) |
| | | $500 | | | (3) |
| | | $1000 | | | (4) |
| $X^5$ | Number of Charges | 1-10 charges | | | |
| $X^6$ | Length of Imprisonment | 1-1000 days in 50 day intervals | | | |
| $X^7$ | Amount of Fine | 1-1000 dollars in 50 dollar intervals | | | |
| $X^8$ | Option of Fine Payment | No Fine Option | | | (1) |
| | | Fine Option | | | (2) |
| $X^9$ | Type of Institutional Confinement | Open Institution | | | (1) |
| | | Closed Institution | | | (2) |

*Six months imprisonment is the maximum penalty allowable for conviction on a summary offense. The remaining maximum penalties listed in this scale involve convictions for indictable offenses.

Table. For example, the racial background ($X^1$) of an offender was indicated as (1) white or (2) Indian or Metis on the basis of designation as such in the file. Similarly, the number of prior convictions ($X^2$), number of current charges ($X^5$), the length of imprisonment ($X^6$), amount of fine ($X^7$), and option of fine payment ($X^8$) were taken directly from the inmate records. The type of institutional confinement ($X^9$) was indicated on the basis of the specific institution to which the offender was assigned. Thus, four of the institutions included in the sample are of the conventional "closed" variety, while the fifth (i.e., Belmont) is specifically oriented to the treatment of alcohol offenders in an "open" environment. Finally, offense seriousness was ranked independently on the basis of the maximum length of imprisonment ($X^3$) and amount of fine ($X^4$) allowable by statute for the offense involved.

In stages one and three of the analysis, involving the interval dependent variables length of imprisonment and amount of fine, the technique utilized is step-wise multiple regression. Racial background is treated as a "dummy variable" in both instances, while the remaining ordinal measures are treated as interval scales. This strategy follows from the discussion presented in Chapter Three.

In the second and fourth stages of the analysis,

involving the dichotomized dependent variables option of fine payment and type of institutional confinement, tabular techniques are employed. The statistical measures applied are the chi square ($X^2$) test of significance and Goodman and Kruskal's gamma ($\gamma$)[2]. A description of the analysis follows.

## LENGTH OF IMPRISONMENT

The analysis begins by considering the length of the sentences received by offenders incarcerated in the five provincial institutions. Correlation and path coefficients relating the variables involved are recorded on the right and left hand side of the diagonal that divides Table XXVIII. Thus, correlation coefficients ($r_{ij}$) relating racial background ($X^1$), number of prior convictions ($X^2$), offense seriousness ($X^3$), number of current charges ($X^5$), and the length of imprisonment ($X^6$) are presented to the right of the diagonal that divides this Table. This matrix of correlation coefficients forms the basis for the calculation of the standardized regression coefficients, or path coefficients ($P_{ij}$), recorded to the left of the diagonal in Table XXVIII. Finally, path coefficients are selected from this matrix for the path diagram presented in Figure III on the basis of two criteria: (1) attainment of statistical significance at the .01 level[3], and (2) explanation of more than one per cent of the variation in the endogenous

TABLE XXVIII:

CORRELATION AND PATH COEFFICIENTS FOR LENGTH OF IMPRISONMENT ANALYSIS

| | | Correlation Coefficients | | | | | Cumulative |
|---|---|---|---|---|---|---|---|
| | | $X^1$ | $X^2$ | $X^3$ | $X^5$ | $X^6$ | $R^2$ |
| Path Coefficients | $X^1$ | -- | .29 | -.28 | -.10 | -.23 | -- |
| | $X^2$ | .29* | -- | -.05 | .01 | .04 | .09 |
| | $X^3$ | -.29** | .03 | -- | .05 | .70 | .08 |
| | $X^5$ | -.10** | .02 | .03 | -- | .11 | .01 |
| | $X^6$ | -.06* | .09* | .68** | .07* | -- | .50 |

NOTE: Correlation coefficients are listed to the right of the diagonal, with the dependent variables indicated by column. Path coefficients are listed to the left of the diagonal, with the dependent variables indicated by row. N=999.

* Statistically significant at the .01 level.
** Statistically significant at the .01 level, and explains more than one per cent of the variation in the dependent variable.

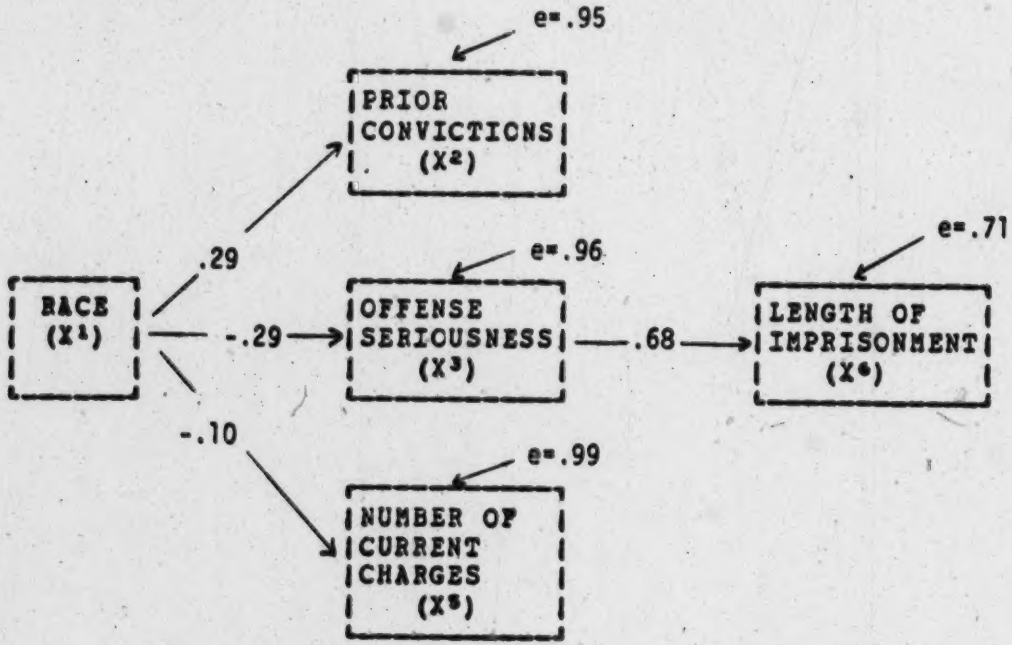
variable.

The path diagram presented in Figure III exposes a popular myth about the sentencing of Native offenders. In spite of the disproportionate presence of Native persons in federal and provincial prisons, it has often been incongruously argued that the courts treat Indian and Metis offenders with differential leniency (e.g., Canadian Corrections Association, 1967). A misleading basis for this belief exists in the zero-order relationship between racial background and length of sentence; thus, Table XXVIII indicates a moderately strong, inverse relationship between the two variables ($r^{61}$=-.23), with Native persons receiving the shorter sentences. However, the path coefficient linking race to sentence ($P^{61}$=-.06) indicates that the relationship is mediated by other variables. Employing Land's (1969) formula for the calculation of total indirect effects (TIE=r - p), we can estimate that race has an indirect effect on sentence of -.17.

The path diagram presented in Figure III indicates that the relationship between race and sentence is mediated by the seriousness of the offense charged. Operating through offense seriousness, race has an indirect causal effect on sentence ($P^{31}P^{63}$) of -.21.[4] Expressed verbally, it is the differential seriousness of the crimes charged against white

FIGURE III:

A PATH MODEL OF SENTENCING: LENGTH OF INCARCERATION



and Native offenders that produces the "disparity" in the sentences received. In short, Native Persons are primarily charged with minor offenses, and they tend as a result to receive shorter sentences. This finding may help to dispel an apparent paradox that has confused discussions of the sentencing of Indian and Metis offenders.

## THE OPTION OF FINE PAYMENT

Having failed to discover anything in the length of prison sentences given to Indian and Metis offenders that would explain their disproportionate presence in the prison population, our attention is directed next to the use of fine options in sentencing. Because the option of fine payment represents a dichotomized dependent variable, and because we anticipated the possibility of interaction between the independent variables involved, a decision was made to utilize tabular techniques in this phase of our analysis. Our first concern was to determine what proportions of the two racial groups were serving prison sentences in default of fine payments.

Table XXIX reveals a rather striking finding: incarceration of Native Persons for forfeiture of fine payment is nearly <u>double</u> the rate for whites. Thus, Table XXIX indicates that nearly <u>two thirds</u> of the Indian and Metis offenders in the sample were serving sentences

TABLE XXIX:

CROSS-CLASSIFICATION OF RACIAL STATUS

AND OPTION OF FINE PAYMENT

| Race | Fine Option: No Fine Option | Fine Option: Fine Option | Row Total |
|---|---|---|---|
| White | 65.7% (394) | 34.3% (206) | 60.2% (600) |
| Indian & Metis | 35.6% (141) | 64.4% (255) | 39.8% (396) |
| Column Total | (535) | (461) | 996 |

Chi Square = 85.50
P .001
Gamma = .55

involving a default in the payment of fines. In contrast, slightly more than one third of the white offenders had failed to take advantage of a fine option. The alarming implication is that a salient factor in the racial composition of this sample is the tendency of Indian and Metis offenders to serve time in prison in lieu of the payment of fines.[5] The relationship suggesting this conclusion is significant at the .001 level, with gamma equal to .55.

There was an expectation in planning the analysis that the tendency to default in the payment of fines would be characteristic of a particular type of offender. Table XXX, involving a control for the type of offense and the number of prior convictions, reveals that this is indeed the case. Inspection of the Table indicates that the relationship between race and option of fine payment is strongest for summary offenders who have previously been convicted. In this instance, gamma reaches a value of .62, a finding that is statistically significant at the .001 level.

The pattern observed seems to be one of repeated involvement in summary offenses, resulting in sentencing options for fine or imprisonment, followed by racial differences in default and incarceration. Our next interest was in determining the link between this pattern and

TABLE XXX:

CROSS-CLASSIFICATION OF RACIAL STATUS BY OPTION OF FINE PAYMENT,

CONTROLLING FOR OFFENSE AND PRIOR RECORD

Offense and Prior Record

| | Summary Offense, No Prior Convictions | | | Summary Offense, Prior Convictions | | | Indictable Offense, No Prior Convictions | | | Indictable Offense, Prior Convictions | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No Fine Option | Fine Option | N | No Fine Option | Fine Option | N | No Fine Option | Fine Option | N | No Fine Option | Fine Option | N |
| White | 28.9% (22) | 71.1% (54) | 76 | 41.5% (51) | 58.5% (72) | 123 | 78.6% (66) | 21.4% (18) | 84 | 87.9% (218) | 12.1% (30) | 248 |
| Indian & Metis | 16.7% (7) | 83.3% (35) | 42 | 14.2% (31) | 85.8% (186) | 219 | 90.9% (10) | 9.1% (1) | 11 | 82.1% (78) | 17.9% (17) | 95 |
| | Chi Square = 1.59<br>P < .30<br>Gamma = .34 | | | Chi Square = 30.74<br>P < .001<br>Gamma = .62 | | | Chi Square = .32<br>P < .30<br>Gamma = -.46 | | | Chi Square = 1.49<br>P < .30<br>Gamma = .23 | | |

involvement in problems of alcohol abuse.

Each offender incarcerated in a provincial institution is ranked on admission as either "temperate" or "intemperate" in his use of alcohol. While this ranking probably is biased in the direction of underestimation, it nonetheless provides a rough indication of the distribution of alcohol abuse. When this measure of alcohol abuse is cross-classified with race, the results indicate that 24.0 per cent of the white offenders (N=141) and 47.6 per cent of the Indian and Metis offenders (N=185) have drinking problems. In short, drinking problems are nearly twice as common among Native offenders as they are among white offenders. Table XXXI takes this finding into account by cross-classifying racial status and option of fine payment, while controlling for alcohol use and prior record. Inspection of this Table reveals that the relationship between race and option of fine payment is strongest for "intemperate" drinkers who have previously been convicted (Gamma=.73;P<.001). In sum, Indian and Metis offenders, significantly more often than whites, seem to become entrapped in the "revolving door" of incarceration that punctuates the life of the alcohol offender.

## THE AMOUNT OF FINE

Given the racial differences observed in the payment of

TABLE XXXI:

CROSS-CLASSIFICATION OF RACIAL STATUS AND OPTION OF FINE PAYMENT,

CONTROLLING FOR ALCOHOL USE AND PRIOR RECORD

Alcohol Use and Prior Record

| Race | Temperate, No Prior Convictions | | | Temperate, Prior Convictions | | | Intemperate, No Prior Convictions | | | Intemperate, Prior Convictions | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | No Fine Option | Fine Option | N | No Fine Option | Fine Option | N | No Fine Option | Fine Option | N | No Fine Option | Fine Option | N |
| White | 53.4% (79) | 46.6% (69) | 148 | 67.0% (199) | 33.0% (98) | 297 | 51.6% (16) | 48.4% (15) | 31 | 78.0% (85) | 22.0% (24) | 109 |
| Indian & Metis | 34.2% (13) | 65.8% (25) | 38 | 35.5% (59) | 64.5% (107) | 166 | 26.3% (5) | 73.7% (14) | 19 | 35.4% (57) | 64.6% (104) | 161 |
| | Chi Square = 3.71<br>P < .001<br>Gamma = .37 | | | Chi Square = 41.45<br>P < .001<br>Gamma = .57 | | | Chi Square = 2.14<br>P < .01<br>Gamma = .49 | | | Chi Square = 45.57<br>P < .001<br>Gamma = .73 | | |

TABLE XXXII:

CORRELATION AND PATH COEFFICIENTS FOR FINE ANALYSIS

Correlation Coefficients

| Path Coefficients | | $X_1$ | $X_2$ | $X_4$ | $X_5$ | $X_7$ | Cumulative $R^2$ |
|---|---|---|---|---|---|---|---|
| | $X_1$ | -- | .29 | -.35 | -.10 | -.27 | -- |
| | $X_2$ | .29** | -- | -.33 | -.01 | -.22 | .09 |
| | $X_4$ | -.28* | -.25* | -- | .14 | .61 | .18 |
| | $X_5$ | -.07 | .06 | .14** | -- | .06 | .03 |
| | $X_7$ | -.07 | -.01 | .59** | -.04 | -- | .40 |

NOTE: Correlation coefficients are listed to the right of the diagonal, with the dependent variables indicated by column. Path coefficients are listed to the left of the diagonal, with the dependent variables indicated by row. N=439.

* Statistically significant at the .01 level.
**Statistically significant at the .01 level, and explains more than one per cent of the variation in the dependent variable.

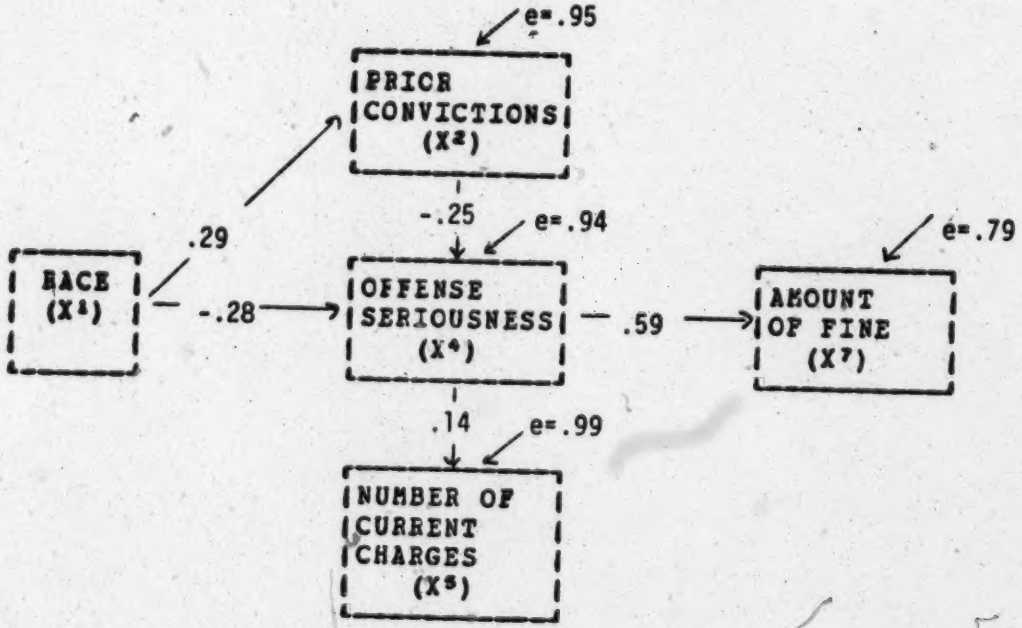
fines, questions naturally emerge regarding the amount of the fines charged offenders from the two groups involved. For example, "Do Native Persons receive higher, lower, or approximately the same fines as white offenders?"

Correlation and path coefficients relating racial background ($X^1$), prior convictions ($X^2$), offense seriousness ($X^4$), number of changes ($X^5$), and amount of fine ($X^7$) are reported in Table XXXII. Path coefficients were selected from this Table for the path diagram presented in Figure IV on the basis of two criteria previously discussed: (1) attainment of statistical significance at the .01 level, and (2) explanation of more than one per cent of the variation in the endogenous variable.

As in the case of length of sentence, the zero-order relationship between racial background and amount of fine ($r^{71}=-.27$) misleadingly suggests that Indian and Metis offenders receive favored judicial treatment. However, looking to the path diagram presented in Figure IV, we see that the relationship between race and amount of fine is mediated by offense seriousness. Similarly, while racial background is linked to number of prior convictions, the effect of the latter variable on amount of fine is mediated by offense seriousness.[6] Thus, the causal indirect effect of racial background on the amount of fine ($p_{21}p_{42}p_{74} + p_{41}p_{74}$)

FIGURE IV:

A PATH MODEL OF SENTENCING: AMOUNT OF FINE



is -.21. Expressed verbally, the effect of race and prior convictions on the amount of fine imposed is "interpreted" by the seriousness of the offense charged. In different terms, Native background does not significantly influence, in either a lenient or punitive direction, the amount of fine imposed, when legal variables are controlled.

## TREATMENT FOLLOWING INCARCERATION

In the final part of our analysis, we were concerned with the type of treatment received by the incarcerated offender. The dependent variable in this phase of our discussion is assignment to an "open" versus "closed" institution. The open institutional setting involves a program primarily designed for the alcohol offender; the closed institutions offer a more rigid and conventional set of programs.

Assignment to a particular institution involves three factors: (1) the recommendation of the sentencing judge, (2) the expressed interest interest of the offender, and (3) the consent of correctional authorities. Immediately follwing sentencing, regardless of judicial recommendation, the offender is assigned to one of the four closed provincial institutions. Within several weeks following this initial assignment, contingent either on judicial recommendation or inmate request, a prison classification officer interviews

the offender and evaluates the merits of referral to the open institution. The results of this referral process are the basis of the analysis that follows.

Our first concern was to determine the proportions of the two racial groups who received treatment in the open institution. The answer to this question failed markedly to distinguish the two groups: 8.9 per cent (N=53) of the white offenders and 4.8 per cent (N=19) of the Indian and Metis offenders were referred to the open institution during the period considered. However, the reader will recall from an earlier section that the "target population" of problem drinkers is nearly twice as large among Native offenders as it is among white offenders. A more meaningful approach to the question, then, requires that we adjust for the extent of the alcohol problem in the two groups involved.

Table XXXIII represents a control for the occurrence of alcohol abuse. The left hand section of this Table reassuringly indicates that "temperate" drinkers of either group seldom receive treatment in the open institution[7]. A notable disparity, however, appears in the right hand section of the Table. Among "intemperate" drinkers, 22.0 per cent of the white offenders and 8.1 per cent of the Indian and Metis offenders are receiving treatment in the open institution. Controlling for the relative presence of a

TABLE XXXIII:

PROPORTION OF NATIVE AND WHITE OFFENDERS RECEIVING TREATMENT IN OPEN AND CLOSED INSTITUTIONS, WITH ALCOHOL USE CONTROLLED

| | Alcohol Use | | | | | |
|---|---|---|---|---|---|---|
| | Temperate | | | Intemperate | | |
| Race | Closed Institution | Open Institution | N | Closed Institution | Open Institution | N |
| White | 95.3% (423) | 4.7% (21) | 444 | 78.0% (110) | 22.0% (31) | 141 |
| Indian & Metis | 99.5% (202) | .5% (1) | 203 | 91.9% (170) | 8.1% (15) | 185 |

Statistical measures are not reported for this table because of the small number of cases in the bottom right hand cell. Calculation of a percentage difference for the table is sufficient to indicate the weakness of the relationship.

Chi Square = 11.60
P .001
Gamma = -.52

target population, then, there is some tendency for white offenders more frequently to receive the presumed benefits of life in the open institution.

There are three plausible explanations for the situation described. First, judges may less often recommend referral of Native offenders to the open institution. Second, Native offenders may less often seek and accept such referrals. Third, correctional personel may less often consent to the transfer of Native offenders. The three possibilities described are certainly not mutually exclusive, and in fact may be mutually supportive. Thus, it may be mutually agreed among the three parties involved that the open institutional setting is less beneficial for Native than for white offenders. This proposition suggests the possibility that alternative treatment opportunities for Native offenders may be desirable.

## DISCUSSION AND CONCLUSION

Findings reported in the preceding sections have several implications. Focusing attention first on the role of race in the length of sentences received, data were presented indicating that although Indian and Metis offenders tend to receive shorter sentences, this pattern is largely explained by the group's disproportionate involvement in minor summary offenses. This aspect of our

analysis, then, describes sentencing practices as conforming with legal requirements and as being free from extra-legal distortions. In particular, the popular belief that Native offenders receive differentially lenient treatment from the courts is not supported by this phase of our analysis.

A second part of the analysis concentrated on the use of fines in sentencing. It was here that the most striking finding appeared: nearly two thirds of the Indian and Metis offenders who entered prison over the two month period did so in default of the payment of fines. This figure was almost twice that of white offenders in the sample. Further analysis linked this pattern with the disproportionate, and repetitious, involvement of Native Persons in summary offenses and related problems of alcohol abuse.

The third part of our analysis involved the amount of the fines received by offenders of white and Indian background. Findings reported in this section paralled those of the first phase of the analysis. Thus, although Native persons tend to receive smaller fines, this is not a concession to disadvantaged circumstances or an expression of paternalistic leniency; rather it is a product of the offenders' involvement in minor offenses. In different terms, when legal variables are controlled, the fines imposed on Indian and Metis offenders approximate those

imposed on whites.

The final phase of the analysis involved the treatments received by offenders following incarceration. The results of referrals to an open institution concentrating on the treatment of alcoholism were analyzed. When racial differences in rates of alcohol abuse were controlled, a disparity in the frequency of Native referrals was observed. In short, the presence of Indian and Metis offenders in the open institutional setting under-represented the occurrence of drinking problems among members of this group.

Findings reported in this Chapter suggest the possible utility of alternative strategies of response to the offense patterns of Native persons. Among the alternatives to current policy that have recently received attention are: (1) the development of a progressive, income-related fine system, (2) the use of Native court workers to negotiate manageable fine arrangements, and (3) the establishment of Native-operated, community-based, detoxification and treatment centers. Attention to the potential benefits of these developments is continued in the final sections of the concluding chapter to this thesis.

## FOOTNOTES

[1]Offenders remanded to provincial institutions while awaiting sentence were not included in this sample.

[2]For a discussion of the chi square test of significance, see Blalock (1960:212-225). For a discussion of gamma, and its proportional-reduction-in-error (PRE) interpretation, see Costner (1965).

[3]The F-test is used as the test of significance. For a discussion of this test, see Blalock (1960:266-269).

[4]For a discussion of the distinction between causal and non-causal indirect effects, see Finney (1972).

[5]It is plausible to suggest that forfiture of fine payment represents a rational response to the circumstances of environment and employment that characterize the winter months included in this sample.

[6]Intuitively, the reader may have initial difficulty in understanding the negative relationship between the number of prior convictions and offense seriousness. However, when the problem of alcohol involvement is considered, the pattern will more easily be understood. In short, alcohol offenders are repetitiously involved, in a "revolving door" fashion, in minor offenses.

[7]Inspection of the data revealed that such persons were usually drug offenders receiving treatment in the open institution.

# CHAPTER VII:

# CRIMINAL JUSTICE RECONSIDERED: A REMEMBRANCE OF CAUSES PAST

# CRIMINAL JUSTICE RECONSIDERED: A REMEMBRANCE OF CAUSES PAST

The explanations of crime are numerous. There are periods, however, when a particular type of explanation will predominate. We live in such a period, and the early nineteen-sixties were similar in this regard. In retrospect, the oversights of a unidimensional thought-way seem clear. We can recall the misplaced optimism of a style of thought that encouraged a "War on Poverty"; we can recognize the presumption of our efforts to create "Great", or even "Just", societies. There were, hopefully, lessons in these experiences.

Marvin Wolfgang summarized the thoughts of leading criminologists during the early sixties: "Although there are important differences among... writers, their dominant themes are similar: There are values in [North] American society which emphasize the goals of (mostly material) success. Because the means to achieve these goals are not available to all in equal measure, many people fall prey to feelings of anxiety and dispair which may be expressed in forms of deviance and delinquency" (1966:65). Most of us foresaw a solution to our difficulties: "... as we expand... choices of work and residence, travel and leisure, school and profession, we will reduce the inequity and increase

participation. Although no firm prediction can be made, both changes should cause a decline in crime" (Ibid.: 67 ). We were hopeful: "We can now afford to be more optimistic because we are coming to recognize that some of the forces leading to crime and delinquency may be subject to control" (Ibid.: 69).

Few would dispute the conclusion that time has provided a discouraging test of our thoughts. Thus, most of us have been forced to revise our expectations. Some revisionists have gone so far as to revise our theories. The popularity of the new explanations have earned them several titles: the societal reactions approach, the philosophy of the underdog, and the labelling perspective. These new sociological explanations again share a dominant theme: the causes of crime lie not in the actor himself, but in the reactors' responses to him. Emphasized in this point of view are the activities of the responding agencies of criminal control.

One objection to the new explanations of crime is that they are again partial. In emphasizing the societal response, they often ignore the antecedent experiences of the persons involved. One result is a new, and still misleading, optimism about the malleability of the circumstances associated with crime (cf. Nettler, 1974; Hagan, 1972; 1973a; 1973b). A second result is a new

interest in criminal justice research. We will argue that some of this research is based in misconceptions about the process of criminal justice.

## ON THE USE AND ABUSE OF DISCRETION

Modern discussions of criminal justice customarily begin by documenting the wide ranges of discretion given to various agencies of criminal control. For example, we are reminded of the vast discretionary powers given to judges for the determination of minimum and maximum sentences. It is observed, with some reason, that such discretion leads to variation in sentencing. This was, of course, one intention of revising the rigid penal statutes of the past. Modern jurists wished to fit the punishment not only to the act, but also to the actor. When "reasonable" men agree on the mitigating circumstances that legitimize variation in sentencing, the use of discretion is just that: the quality of being discreet. When "wise" men disagree, however, the issue of disparity emerges: we become concerned with inequality or incongruity in treatment. Modern criminologists often speak as if the relationship between discretion and disparity were obviously linear and certainly quite strong. Yet this author has not been able to locate any empirical evidence adduced to support this assumption.[1]

Beyond this, the term "disparity" is used promiscuously

in discussions of sentencing. For example, we speak with equal currency of disparities in rates of incarceration between nations, in the length of prison terms between states and provinces, and in the use of probation between judges. The reader will note that each of these applications of the term has in common a reference to an aggregated unit of analysis. However, to confuse the picture further, the term "disparity" is used also to describe variation in the sentences received by different types of offenders. Looseness in the use of the term encourages a carelessness in its interpretation. Thus it is a common error to identify disparities between units of analysis with the disparities that may or may not occur within them. Clearly, that judges in jurisdication "A" systematically impose longer sentences than judges in jurisdiction "B", says nothing about the treatment of minority group offenders in either context. Stated in general terms, there is no logical connection between interorganizational variation and intra-organizational bias. Yet, this distinction is consistently ignored in discussions that link the bureaucratization of criminal justice to race and class discrimination in judicial decision-making. The importance of the distinction lies in the probability that variation between organizations is much more frequent than differential sentencing within them.[2]

In the end, what we really need to know is <u>how much</u> extra-legal attributes like race and social class position contribute to variation in sentencing. We attempted a partial answer to this question in Chapter Two, with a review of twenty American studies of extra-legal attributes and criminal sentencing. The results of this review were instructive: instances where race, social class, age, or sex explained more than five per cent of the variation in sentencing were rare. This was particularly the case in those studies where legal variables were held constant. There were several important exceptions to this generalization, specifically involving the use of capital punishment by juries. These exceptional findings underline the importance of maintaining a vigilant concern for equal treatment before the law. At the same time, however, the more general answer to the question "how much?" challenges a viewpoint that elevates factors like differential sentencing to a position of prominence among those variables thought to be productive of "criminality."

## BARGAIN JUSTICE REAPPRAISED

A second issue that surrounds the process of criminal justice involves the transactions that are a part of criminal prosecution. Sociologists often adopt a rather puritanical attitude toward plea bargaining and charge

negotiation. In these discussions, the bargained plea frequently assumes the characteristics of a traumatic loss of innocence for the unprotected defendant. Further, the act is often seen as degrading, not only for those who participate in the bargaining, but also for a system that respects due process and the ideal of adversary justice. There are, however, oversights associated with this set of attitudes.

The pressures that surround the process of criminal prosecution have the character of a "double bind." Guardians of civil liberties, for equally valid if not mutually accommodative reasons, insist on the swift and expeditious resolution of cases, while at the same time demanding the time-consuming properties of adversary proceedings. The former goal, augmented by bureaucratic demands for efficiency, is customarily assumed to take official priority over any concern for due process. This corrupted form of the bureaucratic ethic has most frequently been cited in the United States (Blumberg, 1967a; Chambliss and Seidman, 1971). Yet, in fairness, it should be noted that the United States accounts for approximately eithty per cent of the world's criminal jury trials (Kalven and Zeisel, 1966).

It cannot, however, be denied that bargain justice is an established and essential aspect of the social

organization of modern criminal justice. What remains at issue is the question of who benefits. Certainly governments benefit in avoiding the further cost and crowding of courtrooms that full adversary procedures would require; but do the defendants not also benefit, and, most importantly, do some benefit more than others? Some criminologists have argued that "bargain justice" is, in effect, a password for "class justice"; a means of exploiting the poor, while protecting the rich. In Chapter Four, we attempted an answer to this question by searching out the links between race and class position, and the procedures that lead to charge alteration and final disposition. Findings here indicated that race and socio-economic status were <u>not</u> significantly related to representation by counsel, the type of initial plea, or charge alteration. Further, the links that tied race and socio-economic status to prosecution and sentencing were of a legalistic variety: offense seriousness, number of charges, and prior convictions. Thus, although counsel, plea and charge alteration were all important to final disposition, these factors were not race or class-connected. The possibility remains that bargain justice is socially unbiased.

## GROUP IMAGES AND GROUP-LINKED BEHAVIORS

A third source of concern about the process of criminal

justice involves the role of the probation officer, during the presentencing process, in determining the recommendation for sentence. We reported in Chapter Five, that among those cases where presentence reports were prepared, the recommendation for sentence alone accounted for more than half of the variation in the sentences imposed. A concern has been that unfavorable group images, disparagingly known as social stereotypes, may interfere with the manner in which these recommendations are offered.

Findings reported in Chapter Five provided limited support for this concern. For example, the racial background of the offender had a small direct and indirect effect on the recommendation offered. The direct effect of race on recommendation seemed easily interpreted. However, the interpretation of the indirect effects was unclear. Both legal and extra-legal considerations intervened between race and recommendation. Thus, a legal factor operative in the situation was the tendency of Native offenders to have been convicted of previous offenses more often than whites. This, in turn, was related to the probation officer's reduced expectations for successful probation adjustment. In addition, the probation officer's perceptions of race- and class-linked demeanor intervened in the relationship between race and recommendation. These factors operated alone, and in concert, to produce a reduction in favorable

recommendations for Native offenders.

These findings clearly raise concern about the influence of a pessimistic perception of the Native offender. At the same time, however, one should note the dilemma of the probation officer who is held accountable for the wisdom of his recommendations, as measured by the incidence of recidivism. The data available indicate that Native offenders recidivate on probation at a rate far higher than whites (Bricker, 1973). A hypothesis worthy of further study is the possibility that negative recommendations contribute to this outcome in a self-fulfilling manner. However, in lieu of any evidence that negative recommendations do in themselves have this effect, we are faced with the possibility that the pessimistic group image may accurately reflect an enduring set of group-linked behaviors. A resulting estimate of the persistence of such behaviors undermines the ease with which findings reported earlier can be interpreted as discrimination. Commenting on the type of interpretation problem involved, Wolfgang (1974) suggests that the descriptive phrase "differential sentencing" be applied. In either case, the findings reported do encourage the search for alternative responses to Native offense pattens that avoid the risks of probation, while also avoiding the costs of imprisonment. One such development involves the expanded use of detoxification and

treatment centres. Consideration of such developments has the potential of broadening our approach to some of the problems of criminal justice.

## THE HIGH COST OF CRIMINAL JUSTICE: AN ECONOMIC ANSWER TO AN UNPROFITABLE QUESTION

The tendency of the sociologist to trade on the emotions associated with the charge of discrimination has often seemed to preclude a more pragmatic appraisal of the problems of criminal justice in economic terms. The incarceration of offenders, just or unjust, Native or non-Native, is expensive. Thus, when incarceration can be avoided, it is a matter of fiscal importance that can be effectively discussed as such.

For example, in Chapter Six we encountered the alarming finding that nearly two thirds of the Native offenders sentenced and admitted to provincial institutions over a two month period were incarcerated in default of the payment of fines. This rate of Native incarceration following forfeiture in fine payment was nearly twice the figure found for white offenders. When the daily cost of imprisonment is calculated, this represents an enormous expense.

The obvious implication of this finding is the desirability of exploring alternative, more economical, ways

of responding to inability or reluctance to pay fines. Much of this problem involves the offense pattern of the alcohol offender. Additional efforts in the development of detoxification and treatment centres have already been encouraged. Operation of such centres at the community level suggests the possibility of fitting programs to the particular group of offenders involved. The importance of this possibility is underlined by the additional finding in Chapter Six that, proportionally, fewer Native than white offenders with drinking problems receive treatment in the open institutions provided for this purpose in the Province.

The development of a progressive, income-related fine system, combined with the additional use of Native court workers to negotiate workable arrangements for fine payment, further holds the hope of reducing the social and economic costs of an expensive problem. However, the experience of the sixties discussed at the outset of this Chapter should forewarn us not to expect either quick or complete solutions to the problems we have described. For example, it is highly doubtful that these alterations in our responses to such problems will lead to the disappearance, or even the reduction, of the behavior patterns involved. Nonetheless, such an approach suggests the advantage of economy, combined with the hope of minimizing the unfortunate consequences that an alcoholic life style implies. These would not be

small accomplishments. Our recommendations are thus offered with the hope that they will be considered, and ultimately implemented, with an appropriate moderation of expectation.

## FOOTNOTES

[1]In contrast with this assumption, it can plausibly be hypothesized that when the range of discretion is greatest, informal norms take over the role of rigid legal requirements in making decision-making inflexible.

[2]This distinction is also one way of calling attention to two groups of variables that deserve further attention in future sentencing research. The two groups of variables include consideration of the following: (1) the effects of such organizational constraints as case-load sizes, court referral rates, and fluctuations of space in treatment institutions, and (2) the role of such community factors as recidivism rates, variation in offense patterns, and the publicity given to certain types of crimes.

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# APPENDIX I:

## DATA COLLECTION INSTRUMENT I:

## PROSECUTION CASES

ALBERTA CRIMINAL JUSTICE PROJECT
DATA COLLECTION INSTRUMENT I:
PROSECUTION CASES

Note: Information collected on this instrument is strictly confidential.

I. General:

1. Defendant Is: In Custody:__On Bail:__N.A.:__
2. Name of Judge or Justice Presiding:_____
3. Name of Defense Counsel:_____None:__N.A.__
4. Defense Counsel Is: Legal-Aid:__Client-Appointed:__N.A.:__
5. Name of Prosecutor:_____
6. Defendant's Sex: Male:__Female:__N.A.__
7. Defendant's Age:____
8. Charges Filed at Intial Court Appearance:_____
9. Final Charges:_____
_____
10. Present, Victim Is: White:__Non-White:__ N.A.:__
11. Victim's Sex: Male:__Female:__N.A.__
12. Victim's Relationship to Defendant: Spouse:__ Sibling:__Parent:__Child:__Friend:__Relative:__ Other:__N.A.__
13. Victim Is: Child:__Juvenile:__Adult:__N.A.:__
14. Previous Convictions:__
15. Plea to Current Charges: Guilty:__or Not Guilty:__
16. If Known, Stage of Proceedings Where Guilty Plea Entered: Before Preliminary Hearing:__After Preliminary Hearing:__ During Trial:__N.A.__
17. Ethnicity of Defendant: Indian:__Metis:__ French:__Asian:__Angel:__Black:__Other:__ N.A.:__
18. Education Completed by Defendant: Grade:__ N.A.:__
19. Defendant Is: Continuing His Education:__Has Terminated:__N.A.:__
20. Defendant Is: Employed:__Not Employed:__Student:__ N.A.:__
21. Type of Employment (When Employed):
    - ( ) Professional, Technical or Related Work (e.g., Doctor, Dentist, Teacher, Lawyer)
    - ( ) Business Manager, Official or Proprietor (e.g., Office Manager, Farm Owner)
    - ( ) Clerical or Related Worker (e.g., Clerk, Accountant)
    - ( ) Craftsman, Foreman, or Related Worker (e.g., Carpenter, Electrician)
    - ( ) Operative or Related Worker (e.g., Truck Driver, Lumberman)

( ) Labourer (e.g., Farm or Non-Farm)
( ) N.A.

22. Defendant's Marital Status: Single:__Married:__
Separated:__Divorced:__Common Law:__N.A.:__
23. Number of Children:_N.A.:__
24. Defendant's Attitude: Very Uncooperative:__
Uncooperative:__Fair/Indifferent:__Cooperative:__
Very Cooperative:__N.A.:__

II. Final Disposition of the Court (Specify): _____
_____
_____

# APPENDIX II:

# DATA COLLECTION INSTRUMENT II:

# PROBATION CASES

ALBERTA CRIMINAL JUSTICE PROJECT
DATA COLLECTION INSTRUMENT II:
PROBATION CASES

Note: Information collected on this instrument is strictly confidential.

I. General:
1. Docket Number of the Case:_____N.A.:__
2. Defendant is: In Custody:__On Bail:__N.A.:__
3. Date of Request for Report:_____
4. Place of Trial:_____
5. Name of Judge or Justice Presiding:_____
6. Name of Defense Counsel:_____No Defense counsel:__N.A.:__
7. Defense Counsel is: Court-Appointed:__Client Appointed:__N.A.:__
8. Name of Prosecutor:_____
9. Name of Probation Officer:_____

II. Probation Report:
1. Name of Defendant:_____
2. Sex: Male:__Female__
3. City of Defendant's Address:_____
4. If Known, Initial Charges Filed (Answer in terms of the section of the Criminal Code):_____
5. Present Charges (Sec. of Crim. Code):_____
6. If Present, Victim is: White:__Non-White:__ N.A.:__
7. Victim's Relationship to Defendant: Spouse:__ Sibling:__Parent:__Relative:__Friend:__ Other:__N.A.:__
8. Victim is a: Child:__Juvenile:__Adult:__ N.A.:__
9. Number of Previous Convictions:_____
10. Most Recent Previous Conviction: Less Than 6 Mo. Ago:__6 Mo. to 1 Yr. Age:__1 to 2 Yr. Ago:__ More Than 2 Yr. Ago:__N.A.__
11. Disposition Resulting From Previous Conviction: Probation:__Fine:__Suspended Sentence:__ Prison:__Combination:__N.A.:__
12. Plea to Current Charges: Guilty:__or Not Guilty: __N.A.:__
13. If Known, Stage of Proceedings Where Guilty Plea Entered: Before Preliminary Hearing:__After Preliminary Hearing:__ During Trial:__N.A.:__

III. Personal History:
1. Ethnicity of the Defendant: Indian:__Metis:__ French Canadian:__Japanese or Chinese Canadian:__Angle Canadian:__Other:__
2. Education Completed by Defendant: Grade:__N.A.:__

3. Defendant is: Continuing His Education:__Has Terminated:__N.A.:__

IV. Employment History:
1. Defendant is: Employed:__Not Employed:__Student:__N.A.:__
2. Type of Employment (When Employed):
( ) Professional, Technical or Related Work (e.g., Doctor, Dentist, Teacher, Lawyer)
( ) Business Manager, Official or Proprietor (e.g., office manager, farm owner)
( ) Clerical or Related Worker (e.g., clerk, accountant)
( ) Craftsman, Foreman, or Related Worker (e.g., carpenter, electrician)
( ) Operative or Related Worker (e.g., truck driver, lumberman)
( ) Labourer (e.g., farm or non-farm)
3. Length of Current Employment: Less Than 6 Mo.: __6 Mo. to 1 Yr.:__1 Yr. to 18 Mo.:__18 Mo. to 2 Yr.:__ N.A.:__

V. Marital Status:
1. Single:__Married:__Separated:__Divorced:__ Common Law:__N.A.__
2. Number of Children:__N.A.:__

VI. Home Conditions (In Terms of Favorability for Probation Adjustment):
1. The Living Situation of the Defendant is: Very Good:__Good:__Neutral:__Bad:__Very Bad:__

VII. Habits:
1. Use of Alcohol: Little or None:__Moderate:__ Problematic:__N.A.:__
2. Is Alcohol Involved in the Present Offense: Yes:__No:__N.A.:__
3. Use of Drugs: Little or None:__Moderate:__ Problematic:__N.A.:__
4. Are Drugs Involved in the Present Offense: Yes:__No:__N.A.:__

VIII. Future Plans:
1. Evaluation of Future Plans in terms of Suitability for Probation: Very Good:__Good:__Neutral:__Bad:__ Very Bad:__

IX. Family:
1. Father's Occupation (When Employed):
( ) Professional, Technical or Related Work

(e.g., Doctor, Dentist, Teacher, Lawyer)
( ) Business Manager, Official or Proprietor (e.g., office manager, farm owner)
( ) Clerical or Related Worker (e.g., clerk, accountant)
( ) Craftsman, Foreman, or Related Worker (e.g., electrician, carpenter)
( ) Operative or Related Worker (e.g., truck driver, lumberman)
( ) Labourer (e.g., farmer non-farm)
( ) N.A.

X. Defendant's Attitude: Strongly Agree to Strongly Disagree

| | | | | | |
|---|---|---|---|---|---|
| 1. Understands Charges: | 1__ | 2__ | 3__ | 4__ | 5__ |
| 2. Acknowledges Guilt: | 1__ | 2__ | 3__ | 4__ | 5__ |
| 3. Is Cooperative: | 1__ | 2__ | 3__ | 4__ | 5__ |
| 4. Indicates Remorse: | 1__ | 2__ | 3__ | 4__ | 5__ |
| 5. Is Polite: | 1__ | 2__ | 3__ | 4__ | 5__ |

XI. Evaluation of the Case:
1. Defendant's Prospects for Successful Probation Adjustment: Very Good: Good:__Neutral:__Bad:__ Very Bad:__
2. Recommendation:
Probation:__Fine:__Suspended Sentence:__Prison:__
Combination (Specify):_____
No Definite Recommendation:___
Other (Specify):_____

XII. Final Disposition of the Court (Specify):_____

# APPENDIX III:

# DATA COLLECTION INSTRUMENT III:

# PRISON CASES

ALBERTA CRIMINAL JUSTICE PROJECT
DATA COLLECTION INSTRUMENT III:
PRISON CASES

Note: Information collected on this instrument is strictly confidential.

I. General:

1. Docket Number(s) of the Case:_____
2. Place of the Trial:_____
3. Name of the Judge or Justice:_____
4. Name of Defendant:_____
5. Sex: Male:__Female:__
6. Age:__
7. Present Charges (Section of Criminal Code):_____
   _____
8. If known, Victim is: White:__Non-White:__N.A.:__
9. Victim's Relationship to Defendant: Spouse:__ Sibling:__Parent:__Relative:__Friend:__Other: __N.A.:__
10. Victim is: Child:__Juvenile:__Adult:__ N.A.:__
11. Number of Previous Convictions:_____
12. Most Recent Previous Conviction: Less Than 6 Mo. Ago:__6 Mo. to 1 Yr. Ago:__1 to 2 Yr. Age:__ More Than 2 Yr. Ago:__N.A.:__
13. Disposition Resulting from Previous Conviction: Probation:__Fine:__Suspended Sentence:__Prison:__ Combination:__N.A.:__
14. Ethnicity of Defendant: Indian:__Metis:__ French:__Asian:__Angle:__Other:__
15. Defendant is: Continuing his Education:__Has Terminated:__N.A.:__
16. Defendant is: Employed:__Not Employed:__Student:__ N.A.:__
17. Type of Employment (When Employed):
    - ( ) Professional, Technical or Related Work (e.g., Doctor, Dentist, Teacher, Lawyer)
    - ( ) Business Manager, Official, or Proprietor (e.g., Office Manager, farm owner)
    - ( ) Clerical or Related Worker (e.g., clerk, accountant)
    - ( ) Craftsman, Foreman, or Related Worker (e.g., electrician, carpenter)
    - ( ) Operative or Related Worker (e.g., truck driver, lumberman)
    - ( ) Labourer (e.g., farm or non-farm)
    - ( ) N.A.
18. Length of Current Employment: Less than 6 Mo.: __6 Mo. to 1 Yr.:__1 Yr. to 18 Mo.:__More Than 18 Mo.:__N.A.:__

19. Marital Status: Single:__Married:__Separated:__Divorced:__Common Law:__N.A.:__
20. Number of Children:__N.A.:__
21. Use of Alcohol: Little or None:__Moderate:__Problematic:__N.A.:__
22. Use of Drugs: Little or None:__Moderate:__Problematic:__N.A.:__
23. Education Completed:__N.A.:__

II. Final Disposition of the Court:
1. Specify for each charge:_____
_____
_____

# APPENDIX IV:

# CHARACTERISTICS OF THE CRIMINAL LAW IN CANADA

## CHARACTERISTICS OF THE CRIMINAL LAW IN CANADA

To place our study in proper context, some distinctive features of the criminal law in Canada should be indicated. A significant factor is that Canadian criminal law is federal in jurisdiction, but provincial in its administration. Law enforcement and court personel fit into this arrangement in different ways. For example, the RCMP is a federal agency that operates contractually as an enforcement agency for many of the provinces. Provincial judges and prosecutors are selected rather than elected, and appointed in the province of jurisdiction.

As distinct from the American pattern, Canadian provincial courts are unparalleled by federal courts serving similar functions. There is no Canadian bill of rights, constitutinal guarantees of "due process" are not provided, and jury trials are infrequent. However, cases tried in provincial courts can be appealed to federal courts. Sentences can be appealed not only by the defense, but also by the crown.

Finally, incarcerated offenders are a shared federal and provincial responsibility. Offenders sentenced to two or more years are assigned intially to provincial institutions for the period of their appeal rights, and are then transfered to federal institutions for the remainder of

their terms. Offenders sentenced for less than two years spend their entire terms in provincial institutions.[1]

## FOOTNOTES

[1]For a more comprehensive discussion of the criminal law in Canada, see Dawson and Ward (1970).